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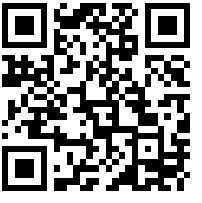

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THE

COUNTER-CASE

PRESENTED BY THE

IMPERIAL JAPANESE GOVERNMENT

TO THE

TRIBUNAL OF ARBITRATION

CONSTITUTED UNDER SECTION I OF THE PROTOCOL CONCLUDED
AT TOKIO, AUGUST 28, 1902,

BETWEEN

JAPAN

AND

GERMANY, FRANCE AND GREAT BRITAIN.

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COUNTER-CASE

OF THE

IMPERIAL JAPANESE GOVERNMENT.

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THE COUNTER-CASE OF JAPAN.

PART I.

INTRODUCTION.

The Japanese Government have the honour, in pursuance of the stipulations contained in Section III of the Protocol of Tokio of August 28, 1902, to submit for the consideration of the Arbitral Tribunal created under that Protocol this their Counter-Case in answer to the Mémoire of the Governments of Germany, France and Great Britain.

The Arbitral Protocol recites in its preamble that "a "dispute has arisen between the Government of Japan on the "one side and the Governments of Germany, France and "Great Britain on the other, respecting the true intent and "meaning" of certain treaty and complementary engagements between those Powers. The engagements, which gave rise to the dispute and which are fully set out in the said preamble, provide, in effect, that no taxes or conditions whatsoever shall be imposed in respect of the property in the former foreign Settlements held under governmental leases in perpetuity other than such taxes and conditions as are expressly stipulated in the leases in question.

The preamble finally declares that "the controversy is not

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"amenable to ordinary diplomatic methods" and that "the "Powers at variance * * * have resolved to terminate the "controversy by referring the question at issue to impartial "arbitration."

The "question at issue" which was submitted to Arbitration is thus stated in Section II of the Protocol:

> Whether or not the provisions of the Treaties and other engagements above quoted, exempt only land held under leases in perpetuity granted by or on behalf of the Japanese Government, or land and buildings of whatever description, constructed or which may hereafter be constructed on such land, from any imposts, taxes, charges, contributions or conditions whatsoever, other than those expressly stipulated in the leases in question.

The wording of the Arbitral Protocol makes it abundantly clear that the only question upon which the Arbitral Tribunal was requested to pronounce a decision, was one which, involving the meaning of the recited treaty and complementary engagements, had been, not a matter of dispute between Japan and either Germany, France *or* Great Britain, but a matter of common discord between Japan on the one side, and Germany, France *and* Great Britain on the other, and to the solution of which the ordinary diplomatic processes had been unsuccessfully applied.

The only issue which responds to the explicit requirements of the Protocol is the question whether buildings standing on land in the former foreign Settlements held under governmental leases in perpetuity are entitled, in virtue of the international engagements quoted in the preamble of the Protocol, to share in the exemption from taxation which

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admittedly attaches to the land itself.[1]

The French Minister in his Note to the Minister for Foreign Affairs of January 8, 1901, raised the question of the right of the Japanese Government to subject to taxation, incomes derived from land held under the perpetual leases in question

1. The correspondence which passed between the Department of Foreign Affairs and the Legations of the Powers Complainant, anterior to the conclusion of the Arbitral Protocol, supports the contention of the Japanese Government as to the limited scope of the submission. In the Notes from the Minister for Foreign Affairs to the British Minister, March 15th; to the German Minister and French *Chargé d'Affaires*, March 18th (Appendix, pp. 153, 55 and 102); and to the German and British Ministers, April 21st (Appendix, pp. 56 and 159); and in the replies to those Notes from the French *Chargé d'Affaires*, March 20th, and the German Minister, May 2nd, 1902 (Appendix, pp. 103 and 57), it was made very clear that the point at issue which was to be submitted to Arbitration had relation exclusively to the house-tax. That view is confirmed by the Note complementary to the Protocol of Arbitration, addressed by the Minister for Foreign Affairs to the Representatives of Germany, France and Great Britain, August 28, 1902; and by the replies of those Representatives of the same date. (Appendix, pp. 14–16.) The French *Chargé d'Affaires* expressly admits that house-taxes and imposts "font l'objet de l'arbitrage," and it is not to be imagined that either the German or British Minister would have been satisfied with the suspension of the forcible collection of house-taxes alone, if other imposts had been equally the subject of arbitration. It would also seem that the Powers Complainant in the first part of their Mémoire shared the opinion of the Japanese Government respecting the scope of the submission. On page 22 of the Mémoire, in speaking of the Note complementary to the Protocol of Arbitration above referred to (Appendix, p. 14), the following language is used:

> Le même jour, le Gouvernement Japonais informait les Ministres des Puissances à Tokio que, tout en continuant à réclamer des étrangers le payement des taxes et impôts en litige, il s'abstiendrait de toutes mesures coercitives en vue de leur perception, pendant la procédure de l'arbitrage.

It is sufficient to add in this connection that the only taxes and imposts, for the collection of which the Japanese Government in the Note in question engaged not to have recourse to forcible measures, were the house-taxes.

Note. In the same relation it seems necessary to call attention to an error in translation of the extract from the Notes of the Minister for Foreign Affairs appearing on page 22 of the Mémoire. In that translation the words "les points en litige" are used, whereas the context shows that the meaning of the Notes would be more accurately represented by the words "le point en litige." It should be added that in the translation of the Note to the British Minister of March 15th (Mémoire, p. 233), the words "le point en litige" are used. In the translation of the Note to the German Minister of March 18th (Mémoire, p. 259), the words "la question de ce droit" are employed. It is only in the translation of the Note to the French *Chargé d'Affaires* of March 18th (Mémoire, p. 287), that the original text is represented by the words "les points en litige." The Notes to the German Minister and French *Chargé d'Affaires* were identical.

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or from buildings standing on such land.[1] But the subject was not again mentioned, and looking at the subsequent correspondence with the French Legation the Japanese Government were justified in assuming that the claim had been abandoned. That it was never a matter of common discussion between the Parties to the present Arbitration, is made clear by the following announcement contained in the Note from the British Minister of February 25, 1902 (Appendix, p. 150):

> I would next point out that no representation on the question of income tax has yet emanated from this [British] Legation.

The German Minister contested the right of the Japanese Government to convert the perpetual leases in question into actual ownership when such leases passed into the hands of Japanese subjects, but as that was a question between Japan and Germany in which neither of the other Powers Complainant participated, it was reserved for discussion between the two Powers concerned apart from the Arbitration. (Appendix, pp. 61 and 65.)

The legislative measures first adopted by Japan in view of the abolition of consular jurisdiction, respecting the registration of rights in land held under perpetual leases and in buildings thereon, were made the ground of complaint by several Powers including the Powers Complainant; but no objections of any kind on the subject of registration have been raised by any

1. See Appendix, p. 1. The original of the above Note is not on file in the Department of Foreign Affairs. Consequently, it was not inserted in the Appendix to the Case of Japan. But finding it in the Mémoire of the Powers Complainant, the Japanese Government requested a copy of it from the French Minister. That request was courteously complied with, and the Note is inserted in the Appendix to this Counter-Case in order to complete the record.

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Power since the enactments of September, 1901 (Appendix, pp. 283–294) came into force, and the Japanese Government justly assumed that that issue had been definitively and satisfactorily disposed of.

No other question relating either to the leased land in discussion or to the buildings standing on such land, saving only the question of the house-taxes, was ever, under the Treaties of 1894–1896, made the subject of controversy either between Japan and the Powers Complainant in common, or between Japan and any one of such Powers. Accordingly, considering that the question of the house-taxes was the only point at issue between the Powers named involving the meaning of the international engagements recited in the preamble of the Arbitral Protocol, and concluding, therefore, that the question of house-taxes was the only issue that had been submitted to Arbitration, the Japanese Government in their Case naturally confined their observations to that point.

As a result of their careful investigations, the Japanese Government were led to several conclusions of fact and law having a bearing upon the question at issue, which are fully set out in their Case. (pp. 72, 73, 100, 101, 155, 190 and 191.) The following are among the more important of those conclusions:

1. That land was the only property granted by the leases in perpetuity which are referred to in the settlement clauses of the Revised Treaties. (Case, p. 72.)

2. That the terms and conditions of those leases could not be extended or amplified to the prejudice

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of the rights of the Japanese Government without their consent, and that they have not consented that the leases in question should be so extended or amplified as to include buildings standing on the leased land. Consequently, that the property held under the leases in perpetuity is limited to the property granted by such leases. (Case, p. 191.)

3. That neither in the Treaties of 1858–1869, the Settlement Arrangements subsidiary thereto, the leases in perpetuity granted in pursuance of those Arrangements, nor in the laws of Japan, is there any stipulation or provision exempting buildings standing on the leased land in question from taxation. That the immunity from taxation actually enjoyed by such buildings in common with the other property of the subjects and citizens of the Treaty Powers while the old Treaties were in force, was solely in consequence of the existence of consular jurisdiction. (Case, p. 73.) That that immunity, which depended wholly upon consular jurisdiction, came to an end with the cessation of such jurisdiction. (Case, p. 100.)

4. That there is nothing in any of Japan's Revised Treaties, which either expressly or by necessary intendment exempts the buildings in question from taxation. (Case, p. 100.)

5. That the claim that the buildings in question are exempt from taxation, is a claim in derogation of essential attributes of sovereignty. (Case, p. 190.) It is a claim to exceptional and differential treatment in the

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matter of taxation. (Case, p. 155.) The claim is, moreover, inconsistent with the object of the Japanese Government in seeking a revision of their ancient Treaties, which was to replace the inequalities appertaining to consular jurisdiction by a regime of equal treatment as between Japanese and foreigners in the matter of taxation, no less than in the matter of the administration of justice. (Case, p. 101.) Accordingly, the engagements upon which that claim rests are subject to the rule of strict interpretation. The right to such exemption can never be presumed, neither can it be shown by implication or doubtful intendment. (Case, p. 190.)

6. That the present controversy relates to immovable property in Japan. Consequently, the laws of Japan to the exclusion of the laws of all other countries must prevail, so far as the issue can be said to depend upon municipal law. According to Japanese legal conception, land and buildings are regarded as separate and independent objects of right, and land and building taxes are entirely distinct in their incidence and destinations. (Case, pp. 190–191.)

The above conclusions, unless successfully challenged, must, it seemed to the Japanese Government, exercise a controlling influence upon the final judgment of the Arbitral Tribunal.

The Japanese Government have given their most serious consideration to the Mémoire of the Powers Complainant, to which the present Counter-Case is intended to be an answer. They can not pretend to any great surprise to find that the

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reasons assigned by the British *Chargé d'Affaires* in his Note of May 23, 1900 (Case, p. 180), and by the German *Chargé d'Affaires* in his Note of August 24, 1900 (Case, p. 186), as grounds for objections on the part of their respective Governments to the imposition of the house-taxes in question, had been entirely replaced by other reasons; but they were surprised to perceive that the Mémoire disclosed a wide departure from the terms of the submission and contained claims that had never been presented to the Japanese Government or made the subject of diplomatic discussion.

The following summary represents, it is believed, the principal cententions upon which the Powers Complainant rest their case:

1. That in renouncing by the Revised Treaties the exceptional rights of authority which they had previously held over portions of Japanese territory, the Treaty Powers completely maintained the economic rights already acquired for their nationals. The rights thus safeguarded have essentially for their object the property held under leases in perpetuity by foreigners in the former Settlements. (Mémoire, pp. 13 and 39.)

2. That in consideration of the payment of ground-rent in respect of leased settlement land, the foreign lessees of such land are entitled not only to exemption from all land imposts, but from all taxes collected for Municipal purposes, regardless of their nature or incidence. (Mémoire, pp. 37 and 41.)

3. That it may be inferred from the stipulations of the new Treaties which exempt property held under

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leases in perpetuity from all imposts, taxes and charges, that the signatory Powers had for their object the maintenance, for the proprietors under such leases, of the rights which they had enjoyed under the regime of the Treaties of 1858–1869. But in any case the new Treaties exempted the proprietors under perpetual leases from all imposts, taxes and charges in respect of their property. (Mémoire, pp. 17–18.)

4. That the system of perpetual leases does not recognize any distinction between the leased land and the buildings standing thereon (Mémoire, pp. 42–46); and that the buildings standing on such land equally with the land itself are held under the leases. (Mémoire, pp. 37 and 46.)

5. That the house-taxes, if imposed, would be an abnormal, exceptional sacrifice of individual rights; they would be a veritable spoliation (Mémoire, pp. 39 and 46); they would represent double taxation (Mémoire, p. 50 note); and they would increase the already existing differential treatment against foreigners as compared with Japanese in the matter of taxation. (Mémoire, pp. 47–50 notes.)

6. That the perpetual leases in question are outside the regime of the laws of Japan (Mémoire, p. 19), and should be governed by a special international law. (Mémoire, pp. 23 and 36.)

7. That Article XXI of the Franco-Japanese Treaty, being intended to maintain the former condition of things from which the rest of the Treaty

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> derogates, should, even if it presents some obscurity, be interpreted in a sense favourable to foreigners; or in other words, the provisions of the Treaty which restrict the rights of foreigners and tend to modify rights established by a formerly existing accord, must be governed by the rule of strict interpretation. (Mémoire, p. 38 note 3.)

These contentions, when compared with the conclusions of the Japanese Government, make the points of difference between the Parties to the Arbitration quite distinct.

The Japanese Government find nothing in the Mémoire of the adverse Party which either makes it necessary for them to modify, in any respect or to any extent, the propositions advanced in their Case, or tends in any measure to shake the absolute conviction entertained by them, that those propositions have their firm foundation in the principles of right and justice, law and equity.

It has already been said that the Mémoire in some respects ignores the terms of the submission and advances claims not covered by the Reference. The direction in which the terms of the submission are disregarded by the Mémoire, is in the contention that the Revised Treaties *maintain* certain rights acquired under the earlier Treaties (Mémoire, pp. 13, 17 and 35); whereas the actual question at issue as presented by the Protocol is whether certain recited treaty and complementary engagements *exempt* certain property from certain taxes and conditions. The importance of the distinction between the perpetuation of pre-existing rights and the creation or establishment of new rights will be appreciated, if it is remem-

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bered that it is chiefly upon the theory of a continuation of rights that the claim of the Powers Complainant rests, that the engagements in question should be interpreted in a sense favourable to the holders of the leases in perpetuity. (Mémoire, p. 38 note 3.)[1] The claims in the Mémoire, which are clearly outside the purview of the Arbitral Protocol, relate to the registration of rights in the leased land in question and the buildings thereon, and to immunity from taxes other than those which are the subject of Arbitration. (Mémoire, pp. 17, 18, 37, 41, 51 and 52.)

The present Counter-Case will, as required by the Protocol, be strictly limited to making answer to the Mémoire of the Powers Complainant. The Japanese Government will endeavour to meet every essential contention of the adverse Party which may be said to be pertinent to the point at issue; but they will be compelled to decline to follow their adversary in an examination of belated claims, which were not the subject of controversy when the Arbitral Protocol was signed, and which are clearly foreign to the question upon which the Arbitral Tribunal was requested to pronounce a final decision.

In their Case the Japanese Government asserted that they stood, in the present Arbitration, in the position of defendant. (Case, p. 9.) They did not deem it necessary, at that time, to explain the reasons upon which that assertion was based; but in view of the inference drawn by the adverse Party from the

1. The Japanese Government in their Case, page 8, admitted that the right of exemption from taxation in respect of property held under governmental leases in perpetuity was confirmed and continued by the Revised Treaties. Their contention is that such confirmation and continuation do not extend to buildings, which are no part of the leased property.

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fact that the new Treaties do not expressly authorize the imposition of the disputed taxes (Mémoire, pp. 37, 39 and 46), it may be well to indicate more fully the exact significance of the position which the Japanese Government claim to occupy before the Arbitral Tribunal.

The right of domestic taxation is an inherent sovereign right. It can not spring from the consent of another Power, neither is it susceptible of any limitations or qualifications not self-imposed. Liability to taxation is the rule, and immunity is the exception. The operation of the rule is presumed. The exception must be proved. Accordingly, in the present instance it is for the Powers Complainant to show that the Treaties have expressly and in plain, unmistakable terms granted the exemption from taxation which is claimed by them. It is not sufficient for them to demonstrate that the Treaties are silent on the subject. They must point to clear and unambiguous conventional engagements according such exemption beyond the range of reasonable doubt. Unless they succeed in doing so they must fail in their case. On the other hand, it is only necessary for the Japanese Government to show in rebuttal that the Treaties are destitute of any such engagements. They can not be required to prove that the Treaties have granted the rights to impose the taxes in question. In the absence of any engagements to the contrary, as has already been said, that right must be presumed to exist.

Hence in the present proceedings the Japanese Government stand in the position of defendant.

With a view to facilitate references, the order and

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arrangement established by the Mémoire of the Powers Complainant will so far as possible be followed in this Counter-Case. References to the Case of Japan, the Notes and Appendix to the Case of Japan, and to the Mémoire of the Powers Complainant will be made in the body of this Counter-Case, and will be respectively designated as "Case," "Notes," "Appendix" and "Mémoire." All other references will be made by means of foot-notes.

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PART II.

IN REPLY TO PART I OF THE MÉMOIRE OF THE POWERS COMPLAINANT.

The Mémoire of the Governments of Germany, France and Great Britain opens with a reference to the operation in 1899 of the Revised Treaties, which were concluded by Japan with the several Powers between July 16, 1894 and August 4, 1896. It is admitted that those instruments are characterized by the resumption by Japan of her rights of jurisdiction over persons of all nationalities within her territory. It is, however, asserted that —

> En renonçant, par ces Traités, aux droits exceptionnels d'autorité qu'elles détenaient sur des parcelles de la terre japonaise, les Puissances contractantes maintinrent au contraire de façon complète les droits économiques déjà acquis à leurs nationaux.
>
> Les droits ainsi sauvegardés ont essentiellement pour objet les propriétés, détenues en vertu de baux perpétuels, par les sujets étrangers, dans les anciennes concessions, et sont garantis par les articles XVIII et XXI des Traités que le Gouvernement Japonais a conclus de 1894 à 1896 avec les Gouvernement Anglais, Allemand et Français. (Mémoire, p. 13.)

And again that —

> Il semble bien ressortir du texte de ces Traités, stipulant que les propriétés possédées en vertu de baux perpétuels ne donneront lieu à aucuns impôts, taxes ou charges autres que ceux mentionnés dans les baux, que

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> les Puissances signataires ont eu pour but de maintenir, en faveur de leurs nationaux, propriétaires en vertu de baux perpétuels, les droits dont ils jouissaient sous le régime antérieur aux Traités. En tout cas, les traités nouveaux exemptaient, par eux seuls, les propriétaires, en vertu de baux perpétuels, de tous impôts, taxes, charges, etc., relatifs à leurs propriétés. (Mémoire, pp. 17–18.)

The above assertions contain several errors, which, having an important bearing upon the question at issue, call for rectification:

I. The jurisdiction exercised by Germany, France and Great Britain in Japan up to the time the new Treaties took effect, was entirely a personal as distinguished from territorial jurisdiction. That jurisdiction was acquired by the Powers named, in virtue respectively of Articles V, VI and VII of the Treaties of January 24, 1861, and of February 20, 1869;[1] Articles V, VI and VII of the Treaty of October 9, 1858, and Articles IV, V, VI and VII of the Treaty of August 26, 1858.[2]

1. The Treaty of January 24, 1861, was abolished by the Treaty of February 20, 1869. Hence only the latter instrument is mentioned in the repealing clause, Article XX, of the German-Japanese Treaty of 1896. (See "Treaties and Conventions between the Empire of Japan and other Powers," 1899, p. 150.)

2. See "Treaties and Conventions between the Empire of Japan and other Powers," Revised Edition, 1884, pp. 371–372, 378–379, 296–297 and 422–424. The system of joint investigation contemplated by Article VII of the Franco-Japanese Treaty of 1858 and Article VI of the Anglo-Japanese Treaty of the same year was never put into force. The jurisdiction acquired by the United States over American citizens by the Treaty of 1858, and by Prussia over Prussian subjects by the Treaty of 1861, being exclusive, the jurisdiction actually exercised by French and British Courts in Japan over French citizens and British subjects was, by transference under the most favoured nation clauses of the French and British Treaties, also exclusive. The rule, *actor sequitur forum rei*, prevailed and consequently the nationality of the Court having jurisdiction was in all cases the nationality of the defendant.

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The nature and extent of the exceptional privileges, exemptions and immunities actually enjoyed by foreigners as a part of or appurtenant to such jurisdiction has already been fully explained. (Case, pp. 70–72.) That jurisdiction and those attendant exceptional privileges, exemptions and immunities were, so far as the Powers Complainant are concerned, expressly and without reservation or qualification, fully and completely abolished by Article XX of the Revised Treaties with Germany and Great Britain and by Article XXIII of the Franco-Japanese Treaty of 1896.

The only authority upon any part of the territory of Japan exercised by the Treaty Powers at the time the Revised Treaties came into force, and consequently the only territorial authority then renounced by those Powers, is defined in Article VII of the Arrangement of 1868 concerning the foreign Settlements at Hiogo and Osaka. (Appendix, p. 213.) That authority related exclusively to those two Settlements, and consequently it affected only *tsubo* 50,581.85 (square metres 167,212.72) of land. The remaining foreign Settlements of Yokohama, Nagasaki and Tokio including the Bluff at Yokohama, covering *tsubo* 460,569.04 (square metres 1,522,542.48) of land, were, when the Treaties of 1894–1896 came into operation, under the sole and exclusive control, administration and authority of the Japanese Government. The surrendered authority in question consisted of a controlling voice on the part of the foreign Consuls at Hiogo and Osaka and an elected Committee of three foreign residents, in the administration, for Municipal purposes, of the ground-rent of those two Settlements amounting annually to *yen* 15,077.47

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(*francs* 38,950.09).[1] The Powers Complainant contend that in renouncing that authority, the Treaty Powers maintained the economic rights previously acquired for their nationals. The conflicting claims that are advanced in different parts of the Mémoire make it impossible to determine with any degree of accuracy what is meant by the words "economic rights." If it was intended to assert that the buildings standing on settlement land held under governmental leases in perpetuity, are entitled, equally with the land itself, to immunity from taxation, then it was intended to claim that in return for the renunciation by the Treaty Powers of an indirect voice in the partial municipal government of two foreign Settlements containing less than 1,700 foreign residents and having fixed annual Municipal budgets amounting in the aggregate to about *yen* 15,000, the Japanese Government surrendered the right of taxation in respect of the buildings in question not only in the former Settlements of Hiogo and Osaka but in all the other foreign Settlements. The total amount of taxes imposed on foreign-owned buildings in the several former Settlements for the 34th fiscal year, was *yen* 62,710.99 (*francs* 162,003.18). If on the other hand it was intended to contend that the economic rights which, it is alleged, have been maintained, include the exemption of the foreign residents in the late Settlements from all Municipal taxation, then it is in effect claimed that in return for the renunciation by the Treaty Powers of the so-called territorial authority above described,

1. These figures are exclusive of the sum of *yen* 1,186.26 (*francs* 3,064.50) annually paid to the Japanese Government as land-tax. They are also exclusive of the police-tax authorized by Article VIII of the Hiogo and Osaka Arrangement of 1868.

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the Japanese Government have surrendered the right to impose taxes which for the 34th fiscal year amounted to *yen* 214,637.11 (*francs* 554,478.49). The mere statement of these propositions carries with it a sufficient condemnation of the claims.

II. But the Japanese Government deny that any economic rights were maintained or intended to be maintained by the treaty stipulations in question. It is admitted by the Powers Complainant (Mémoire, p. 39) that if the treaty revision project of 1887 (Case, p. 75) had been adopted and put into force, the house-taxes which are now in controversy would have been leviable. It is true, those Powers in making that admission asserted that such house-taxes, in common with some other imposts, would have been in exchange for the ground-rent. The Japanese Government are well satisfied that a careful examination of the first paragraph of the settlement clause of the project of 1887 will disclose the fallacy of that assertion. The only real property to which that paragraph related, was the land granted to foreigners under leases in perpetuity. Land was the only real property in respect of which governmental leases in perpetuity existed in favour of foreigners. It was the only real property subject to rent and in respect of which the Japanese Government were in position to grant to foreigners absolute titles in place of leases in perpetuity. (Case, p. 78.) Consequently, the only taxes that were to have been exchanged for the ground-rent were the imposts leviable in respect of such ground. The right of the Japanese Government to impose the house-taxes in question would not have owed its origin to the settlement clause of the project of

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1887, if that project had been brought into operation. That right, in common with the general right of taxation, already existed but was in abeyance during the regime of consular jurisdiction, and would have revived as a consequence of the abolition of such jurisdiction. (Case, pp. 70–72 and 157.) Consequently, the Japanese Government maintain that under the project of 1887 the right to impose the house-taxes in question would have existed entirely independently of the settlement clause of that project, and independently, therefore, of any question of exchange of land-taxes for ground-rent. So it would under the revision scheme of 1888. In 1887 and 1888 the ground-rent in some of the Settlements exceeded and in others it fell short of the land-taxes, which it was then proposed should replace such rent. Seven years later the land-taxes taking all the Settlements together would have exceeded the rent by 30 per centum (Case, pp. 143–144), and looking at the observations contained in the Memorandum dated September 22, 1899, and the Note dated August 24, 1900, of the German Minister (Appendix, pp. 23, 24 and 35), it may be fairly assumed that at the present time the leasehold estates of settlement land are regarded as more valuable than actual ownership would be, and that the lessees of such land would be indisposed to-day to consent to any change in their titles.

It is admitted by the Powers Complainant (Mémoire, p. 39) that, under the scheme of 1887, settlement buildings would have been subject to house-taxes. In order to impose such taxes it would have been necessary to consider the buildings wholly apart from the land on which they stood. If the land and buildings would have been divisible for the purposes of taxation

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in 1887, when actual ownership of both land and buildings was contemplated, it is impossible to appreciate the grounds of objection to a similar separation of land and buildings at the present time when the land is held under the title of leases in perpetuity and the buildings under the title of actual ownership. In any case, if the house-taxes in question were admissible in 1887, they certainly were not less so in 1894. Can it be imagined that it was the intention of Japan in 1894 to surrender a right of taxation which, in 1887, under circumstances not more favourable to the land-renters, had been fully recognized by all the Treaty Powers? Let the records of the negotiations of the Anglo-Japanese Treaty answer.

In the Memorandum of the Interview held at the British Foreign Office on the 2nd April, 1894,[1] between the negotiators of the Revised Anglo-Japanese Treaty, appears the following:

> Mr. Bertie then pointed out that each successive stage of the long negotiations which had passed on the subject of Treaty revision had been marked by the fact that Japan on each occasion asked for more and offered less.

The Japanese Government admit the substantial accuracy of Mr. Bertie's observation. Each new attempt of Japan to secure a revision of her ancient Treaties was marked by a nearer approach to the plane of equal treatment, and in the Treaties of 1894–1896 scarcely a vestige is left of the exceptional privileges, exemptions and immunities enjoyed by foreigners under the Treaties of 1858–1869.

The object of the protective clauses of the settlement

1. British Parliamentary Paper, "Japan, No. 1 (1894)," p. 93.

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Articles of the Revised Treaties is, in the opinion of the Japanese Government, very apparent.

The buildings standing on the land held under governmental leases in perpetuity in the former Settlements, are guaranteed most favoured nation and national treatment in the matter of taxation, by Article I of the new German and British Treaties and by Articles I and III of the Revised Treaty with France. (Appendix, pp. 262, 273 and 270–271.) But that guarantee does not extend to the land on which such buildings stand. If perpetual leases similar to those existing in favour of foreigners in the late Settlements were a recognized tenure in the general land system of Japan, the most favoured nation and national footing engagements above referred to would have been sufficient to protect the settlement land in question, no less than the buildings, against unequal treatment. But as Japanese subjects do not hold land under such titles, the general clauses of the treaties are inapplicable; and such land continuing to be subject to a governmental rent charge, it was not unreasonable to provide by treaty that such rent charge should cover land-taxes of all kinds.

The land in the several former Settlements held by foreigners under governmental leases in perpetuity is valued at over *yen* 16,500,000. (Case, p. 143.) The Japanese Government firmly and sincerely believe it was solely with a view to extend to that otherwise unprotected valuable property a protection corresponding to the most favoured nation and national footing treatment, that the protective clauses of the settlement Articles of the Revised Treaties were adopted. That was an object worthy of a special treaty engagement. It was,

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moreover, entirely in harmony with the other provisions of the new Treaties.

The house-taxes in respect of all the buildings in the late Settlements owned by the subjects and citizens of all the Treaty Powers, amounted for the 34th fiscal year to less than *yen* 63,000 (Case, p. 142), and the Japanese Government find it impossible to bring themselves to the conclusion that it was intended by the protective clauses in question to secure in favour of settlement buildings, which were already fully shielded against differential treatment, an insignificant immunity from taxation alike repugnant to the spirit of the Revised Treaties and inconsistent with the principle of equal treatment.

III. No immunities of any kind were established by the Revised Treaties in favour of the *proprietors* of perpetual leases. The immunities respecting such leases, which were created by those Treaties, were wholly and exclusively in favour of the property leased. All arguments based upon the assumption of personal as distinguished from property immunities must consequently fail.

It is next declared in the Mémoire:

> Cependant, au moment de la mise en vigueur des nouveaux Traités, la Municipalité de Yokohama manifestait son intention (septembre 1899) d'exiger le payement des taxes municipales pour les habitations élevées sur les terrains de l'ancienne concession européenne, en soutenant que, seul, le lot de terrain décrit dans le bail perpétuel était exempté d'impôts par les Traités. (Mémoire, p. 18.)

The Japanese Government do not question the substantial accuracy of the foregoing assertion so far as it goes, but they

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believe that its incompleteness coupled with the manner in which it is stated, will give rise to erroneous impressions. It was not alone the Municipal Authorities of Yokohama who manifested an intention to impose the house-taxes in question, neither was it the house-taxes alone that were involved in that intention.

On the contrary the Municipal Authorities of Nagasaki, Hiogo, Osaka and Tokio, as well as those of Yokohama, in the ordinary course, notified the foreign residents of the former Settlements of their liability to pay Imperial and Local taxes and rates. The house-taxes in question were but one of the several items of taxation embraced in those notices. No separate or independent action respecting the imposition of taxes on buildings was taken, excepting such action as was subsequently made necessary by the refusal, in some cases, of house-owners to pay the taxes in question. The Municipal Authorities in issuing such notices did not explain the grounds upon which they claimed the right to impose the house-taxes. They assumed that the persons addressed, equally with themselves, would understand those grounds.

The Japanese Government in the interest of historical accuracy, but chiefly with a view to exclude incorrect inferences, also find it necessary to take exception to some of the statements contained in the Mémoire respecting the course of the diplomatic correspondence and events which led up to the submission of the point at issue to Arbitration.

On page 18 of the Mémoire it is stated that in the presence of the claim of the Japanese Municipal Authorities to impose taxes on settlement buildings, the German Minister

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by his Memorandum of September 22nd and Note of October 27th, the British Minister by his Memorandum of September 29th and Note of October 28th, and the French Minister by his Notes of October 28th and November 2nd, 1899, requested the Japanese Government to suspend the collection of the taxes in question until the issue raised by the action of the Municipal Authorities at Yokohama had been settled.

The Momoranda of September 22nd and 29th, and the Note of November 2nd contain no such request. The request appears only in the Notes of October 27th and 28th.

The Mémoire next declares:

> Dans le Mémorandum du 22 septembre auquel se rapporte sa note du 27 octobre, le Ministre d'Allemagne déclarait que la rente foncière, étant stipulée comme seule charge dans les contrats de concessions, les terrains et les bâtiments doivent être exempts de tous autres impôts, soit gouvernementaux, soit municipaux.

This is also incorrect. On September 22, 1899, Count von Leyden presented to Viscount Aoki one Note and two Memoranda. The Note recited the objection of the German Minister to the registration of leases in perpetuity as superficies, and the two Memoranda related, one to the collection of fees for the registration of said leases and the other to the conversion of such leases into actual ownership upon transfer to Japanese subjects. In none of those documents was any question raised regarding the imposition of house-taxes on buildings standing on settlement land held by German subjects under leases in perpetuity. In his Note of October 27th, it is true, the German Minister suggested that it would be advisable in the interest of the adjustment of the question

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to have a suitable delay granted in the collection of the house-taxes by the Municipal Authorities of Yokohama. That recommendation was based on the ground that the question of the levy of the house-taxes was interdependent with the questions which he had raised respecting leases in perpetuity, *at least in so far as it related to the land-rent payable in respect of the settlement-ground.* No direct claim in behalf of German subjects to exemption from taxation in respect of the buildings in question was raised by the German Representative until August 24, 1900 (Appendix, p. 36), that is to say nearly a year after the right of taxation had been exercised by the Japanese Municipal Authorities.

The arguments of the French Minister, which are next summarized in the Mémoire, were embodied in the Note of November 2, 1899. That Note was in answer to the communication of the Minister for Foreign Affairs of October 30th, announcing the inability of the Japanese Government to suspend the collection of the house-taxes in question.

The Japanese Government are unable to perceive the analogy announced in the Mémoire, between the arguments advanced by M. Harmand in that Note and those presented by the British Minister in his Memorandum of September 29th. Neither can they find in that Memorandum any assertion that Article XVIII of the Anglo-Japanese Treaty of 1894 expressly exempted the buildings in question from taxation. The claim of Sir Ernest Satow to such exemption was wholly inferential, and was based upon the untenable assumption that pre-existing conditions were to be continued under the new Treaties. (Case, pp. 165–171 and Appendix, pp. 113–115.)

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The questions relating to superficies and the registration of rights appertaining to perpetual leases with which the Mémoire next deals, form no part of the issue in the present Arbitration. Consequently, the Japanese Government, although unable to admit the entire accuracy of the recital, do not find it necessary, in connection with the present case, to follow the Powers Complainant through their narrative concerning those two points.

The next remark in the Mémoire which calls for attention, appears on page 20 and reads as follows:

> La même lettre [Note from the German *Chargé d'Affaires* dated August 24, 1900] demande que les bâtiments construits sur les propriétés possédées en vertu de baux perpétuels soieut exempts de toute taxe municipale, parce que la perception d'une taxe serait contraire au texte des traités et surtout à la note additionnelle au Traité Allemand-Japonais du 4 avril 1896.

In the first place the Japanese Government are compelled to declare that, in their opinion, the foregoing extract does not give an accurate or fair summary of the contents of the Note in question. In support of that declaration the following versions of the observation of the German Representative,—one taken from the Mémoire of the Powers Complainant, and the other from the Case of Japan,—are given:

Mémoire, p. 253.	Case, Appendix, p. 40.
4. *L'imposition des bâtiments élevés sur des fonds de terre.*—Pour trancher la question controversée, si les	4. *Taxation of buildings erected on lands (Grundstücke) in question.*—For the determination of the

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bâtiments élevés sur des fonds de terre concédés peuvent être soumis à un impôt communal ou départemental, le numéro 3 de la Note additionnelle au Traité de commerce Allemand-Japonais du 4 avril 1896, dont la teneur a été confirmée par Votre Excellence, est d'une importance concluante. Il en résulte l'intention du Gouvernement Impérial de garantir les détenteurs des fonds de terre concédés comme tels, contre toute imposition, autre que la rente foncière prévue par les contrats. Mais comme ces terrains servent en première ligne pour des maisons d'habitation, la garantie proposée aurait été illusoire dès le début, si les constructions élevées sur ces terrains avaient pu être imposées de taxes à volonté.

J'ai donc reçu pour instruction de demander, pour les sujets Allemands établis ici, l'exemption de la taxe des bâtiments à l'égard des fonds de terre concédés.

point at issue as to whether buildings on Settlement-lands (*Niederlassungsgrundstücke*) may be subjected to communal or local taxation, No. 3 of the Note appended to the German-Japanese Commercial Treaty of April 4, 1896, the contents of which were confirmed by Your Excellency, is of the decisive significance. From that it is evident that the intention of the Imperial (*German*) Government was to safeguard the proprietors of the Settlement-lands (*Niederlassungsgrundstücke*) as such, against all forms of taxation except the stipulated ground-rent. As, however, those lands (*Grundstücke*) were to serve primarily the purposes of residence, the intended guarantee would have been from the very beginning of no practical value, if the buildings erected thereon could be burdened with taxes of optional amount.

I have, therefore, been instructed to claim for the German subjects settled in Japan the exemption from house taxes imposed in respect of Settlement-lands(*Niederlassungsgrundstücke*).

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It will be observed from the foregoing excerpts that the reason for Germany's objection to the imposition of the house-taxes, was not, "parce que la perception d'une taxe serait "contraire au texte des traités et surtout à la note additionnelle "au Traité Allemand-Japonais du 4 avril 1896," but because the intended guarantee in favour of the holders of land would be illusory, if the buildings erected on such land were to be liable to unrestrained taxation. This remained to the last the sole ground upon which the German Government contested the right of the Japanese Government to impose the house-taxes in question. (Case, pp. 186–187.)

Finally, it is worthy of remark that the Powers Complainant in using the phrase "les bâtiments construits sur les "propriétés possédées en vertu de baux perpétuels," have clearly employed the word "propriétés" in a restricted sense, meaning land alone. It is precisely in the same restricted sense that the Japanese Government have, from the first, consistently maintained that that word was used in Article XXI of the Franco-Japanese Treaty of 1896.

Again on page 20 of the Mémoire, after referring to the Notes of the French Minister of December 31, 1900 and January 8, 1901, it is stated:

> Le Ministre de France traite, par la même occasion, la question de la taxe à percevoir sur les maisons des anciennes concessions étrangères et la repousse à nouveau comme contraire à l'esprit et au texte des Traités.

This statement is also erroneous. The French Minister made no allusion to the question of house-taxes in either of those Notes.

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As the Powers Complainant have failed to make the protest of December 10, 1899, to which they refer on page 20 of the Mémoire, a part of their case, the Japanese Government are naturally unable to judge of the nature of the objections of the French residents to the imposition of house-taxes.[1] But

1. An estimate of the general character of the objections may, however, be made from a letter which was addressed under date of September 25, 1899, by M. Ratard, the French Consul at Yokohama, to one of his nationals in reply to the latter's inquiry. The following translation of that letter appeared at the time in one of the newspapers published at that port and was made the subject of general discussion in the press.

Yokohama, 25th Sept., 1899.

SIR:—In reply to your letter of this morning, I hasten to let you know that my opinion, subject naturally to the approbation of the Ministry at Paris, is that the municipal and provincial taxes with which the Japanese Authorities wish to saddle the houses or buildings erected on the ground of the foreign concession at Yokohama, are clearly contrary to the stipulations of Article XXI of the Franco-Japanese Treaty of the 4th August, 1896.

From the principles which appear to be advanced by the Japanese Government, perpetual leases, and consequently ground-rent, are only applicable to the soil of the concession, and would in no way cover edifices established above, and under these conditions, the portions of land described in the record of the lease would be alone exempt from additional imposts and taxes, whilst the houses would remain exposed thereto.

This theory will not hold good when we examine it in the light of precedents. In fact, in March, 1860, at the moment of the transfer of the foreign settlement from Kanagawa to Yokohama, the French Legation notified the French residents, through the medium of the Consulate, that one of the conditions agreed to in order to obtain the concession of a lot on the new site chosen for the residence of foreigners was: *That all concessions of land, on which there should not be established after an interval of six months, buildings suitable to the class of operations of the grantee would be annulled.*

This obligation has been rendered absolutely imperative and under penalty of foreclosure of the perpetual lease for the French residing in Japan, by Article VII of the Consular Ordinance of the 21st June of the same year, regulating the exercise of the right of property for our nationals in the Settlement of Yokohama.

The international agreement of the 29th December, 1866, for the improvement of the foreign concession at Yokohama, in its Article VI, also imposed the construction of edifices (of a substantial character) on the conceded lands, as an absolute obligation, equally under penalty of foreclosure of all rights to the perpetual lease.

Under these conditions, it appears to me indisputable that the perpetual lease and the ground-rent which it involves, apply not to the bare ground, but rather to ground built upon, and it is under this title that French citizens ought to be exempted from all additional taxes whatsoever by virtue of our treaty of the 4th August, 1896.

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the Japanese Government labour under no such disadvantages so far as concerns the action of the public meeting of January 19, 1900, which is next alluded to in the Mémoire. Looking at the newspaper reports of that meeting, from which, it is presumed, the summary appearing on pages 319–320 of the Mémoire was taken, it would seem that the meeting was called by the International Committee referred to on pages 162–164 of the Case of Japan. The Chairman of the International Committee presided at the meeting. He explained the action taken by the International Committee and then read the letter which he had addressed to the Minister for Foreign Affairs on the 23rd December, 1899, and which is given on pages 406–407 of the Appendix to the Case of Japan. Mr. Holm did not, in the course of his remarks explaining the object of the meeting, mention the question of house-taxes. Mr. Walter proposed the resolutions which are given on page 320 of the Mémoire. In doing so he said:

In the next place, it should also be admitted that by the terms of Article XII of the Memorandum of the 19th December, 1864, municipal taxes have been provided for through the abandonment which, in view of the higher rent of perpetual leases, the Japanese Government has made to the Municipal Consular Council, of 20 per cent. of the ground-rent for the work of necessary improvement, and which the actual municipality ought to inherit, for I have not found in my archives a trace of any other subsequent diplomatic act referring to that abandonment.

For all these reasons, and for others of the same kind, which it is not necessary to detail at greater length, but which I explained to our Legation and to the Ministry of Foreign Affairs at Paris, I consider that the Local Authorities have no right to levy, on the houses of the foreign concession, the municipal and provincial taxes, which they are now trying to collect.

I am, besides, firmly persuaded and convinced that after an impartial study of the question, the Japanese Government, with the tact and ability which it has applied to managing the transition between the old and new regime, will not hesitate to admit the good grounds of the claims which the French are able to bring to bear on this subject.

Yours truly,

(Signed) L. RATARD.

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There was another matter which they might perhaps think trivial, but which he still thought merited attention. The Japanese Local Authorities had proposed to levy on the buildings which were situated on their land certain Municipal and Local taxes. Included in these taxes were the cost of maintaining roads and drains. In connection with that matter he begged to read to the meeting the following extract from the Land Regulations of Kanagawa for August, 1860,[1] which he believed were the earliest regulations on the subject:—

"The proprietorship of the soil being vested in the "Japanese Government the streets, roads, and ditches "will at all times be kept in thorough order and repair, "and sewers or drains will be made when necessary by "the Japanese Government, and no tax will be levied on "renters in the foreign quarter for this purpose."

They knew perfectly well, continued Mr. Walter, that in these taxes were included certain expenses connected with roads and drains. It was evident from these regulations that, however liable foreign rentholders [land-renters] might be for other taxes, the amount for roads and drains should be deducted. Into the larger question as to whether any tax should be levied on buildings or land in the former foreign Settlements, he preferred not to enter at the present time.[2]

It will thus be seen that Mr. Walter did not call in question the right of the Japanese Government to levy house-taxes on settlement buildings for general municipal purposes. That point, he declared, was reserved. His objections related to the imposition of those taxes for certain special purposes. None of the other speakers on that occasion made any reference to the subject of the house-taxes, and it is quite clear that that question was regarded as wholly foreign to the object of the

1. The Regulations here referred to are the Consular Land Regulations for Yokohama. The Japanese Government were not a party to those Regulations. (Case, pp. 18–22.)
2. See Appendix, p. 34.

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meeting as it had been to the action of the International Committee.

All the specific complaints enumerated in the resolutions were dealt with by the enactments of September, 1901 (Appendix, pp. 283–294), and the Japanese Government had supposed that all of those grievances had been satisfactorily adjusted until the attempt was made in the Mémoire to revive some of them. But in any event the resolutions which the Powers Complainant have considered of sufficient importance to embody in their case, were not regarded as of sufficient importance to bring to the notice of the Japanese Government. Neither through the Foreign Representatives nor any other channel were those resolutions ever communicated to the Japanese Government. The resolutions have no relation whatever to the question at issue, and the motive of the Powers Complainant in bringing them forward at this time is not disclosed.

On page 21 of the Mémoire it is said:

> La Loi sur les baux perpétuels, promulguée le 20 septembre 1901 reconnaît l'existence des baux perpétuels établis en faveur des étrangers et maintenus par les articles XVIII et XXI des Traités passés entre les Puissances et le Japon. Puisqu'elle admet ainsi l'existence d'un contrat différent des contrats du droit Japonais, qu'elle confirme le régime spécial établi en faveur des étrangers par les Traités, il semblerait qu'elle eût dû, de même, reconnaître les droits qui découlent logiquement de ce régime.

The force of this logic is not understood. Nor is the statement correct regarding the effect of the Law relating to leases in perpetuity. That Law did not confirm what is

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described as "le régime spécial établi en faveur des étrangers "par les Traités." It simply confirmed the rights of perpetual lease created under title-deeds issued by the Japanese Government. Such rights are recognized as *jus in rem sui generis* not provided for in the Civil Code of Japan; but they are rights in land to which the provisions of the Civil Code are applicable. Buildings standing on land held under leases in perpetuity are no part of the property in respect of which rights of perpetual lease have been granted. They are foreign to the leases and, therefore, can not be objects of rights recognized by the Law in question. They are absolute property of their owners. If by the expression "le régime spécial "établi en faveur des étrangers par les Traités," immunity from taxation enjoyed by foreigners in consequence of consular jurisdiction under the rule of the old Treaties is referred to, such special regime was expressly abolished by the repealing clause of the Revised Treaties. (Appendix, pp. 264, 272 and 274.) It is not, therefore, perceived why the Japanese Government having recognized special rights in land, should also be expected to admit the exemption from taxation of buildings standing on the land which is the sole object of the rights in question.

Immediately following the passage above quoted the Mémoire continues:

> Le Gouvernement Impérial joignait cependant à cette loi une ordonnance (No. 178), établissant une distinction expresse entre les terrains et les bâtiments qu'ils supportent, et exigeant leur inscription par les Autorités Japonaises sur des registres distincts.

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This is not correct. Distinction between land and buildings in the matter of registration was not established by Imperial Ordinance No. 178 of September 20, 1901. That distinction dates back from the time the system of registration was first adopted in Japan. (Case, p. 159 and Notes, pp. 48–55.) When, therefore, in July, 1899, it became necessary in view of the proximate operation of the Revised Treaties to provide for the registration of rights acquired by foreigners in immovables during the existence of the old Treaties, an Imperial Ordinance, No. 329, based on the prevailing system of registration was issued. (Appendix, p. 278.) Under that Ordinance separate Land and Building Registry Books were to be kept as provided by the existing registration laws. Ordinance No. 178 of 1901 repealed Ordinance No. 329 of 1899, but it maintained the system of separate Land and Building Registry Books.

The paragraph following the one from which the above extracts have been taken, runs as follows:

> Continuant à s'inspirer de ces mêmes principes du contrat de superficie, qu'il vient cependant de reconnaître ne point s'appliquer aux baux perpétuels des anciennes concessions, le Gouvernement Japonais affirme qu'il convient de distinguer le terrain des constructions qui le couvrent; que les constructions élevées sur les anciennes concessions ne peuvent être considérées "comme "biens détenus en vertu des titres de baux perpétuels "et que, comme conclusion logique et inévitable, ils ne "font pas partie de ceux pour lesquels les Traités pré- "voient une exemption des taxes." (Voir annexes, p. 286.)

The passage appearing in quotation in the above extract is not found on page 286 of the Mémoire to which reference is made. Neither is it found in any of the translations submitted

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by the Party Complainant of the Notes of the Japanese Minister for Foreign Affairs of October 21, 1901, addressed to the Representatives of Germany, France and Great Britain.

The contention of the Japanese Government as enunciated in those Notes reads in English translation as follows:

> The property held under perpetual leases is, in the opinion of the Imperial Government, necessarily limited to the property granted by those leases, for it seems clear to them that no property not actually granted by the leases can be held under the leases.
>
> By reference to the leases and the arrangements of an international character under which the leases were issued, it will be found that the property granted by the leases was exclusively land. The buildings standing on the leased land formed no part of the granted property. On the contrary they have, without exception, been erected since the leases were issued, and, equally without exception, are the absolute property of the lessees.
>
> The Imperial Government have drawn from this chain of circumstances what seems to them to be the natural and inevitable conclusion that the buildings standing on the leased land, not having been included in the original grants, and being still held wholly independently of those grants, cannot be said to be held under the leases in question, and are, therefore, outside the purview of the conventional engagements exempting property held under such leases from taxation. Nor is it perceived how it would be possible to bring such buildings within the scope of those engagements, unless it be assumed, in contradiction of actual facts, that they equally with the land belong to the Imperial Government and that they actually form a part of the property granted by the leases. (Appendix, pp. 52, 99 and 147.)

It is not perceived how this argument can be characterized as inspired by the principles of the contract of superficies.

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The argument is based on the ground that the property held under leases in perpetuity is limited to the property granted by such leases, and that the property granted by those leases was exclusively land. The distinction between land and buildings pervades the whole system of Japanese jurisprudence. It is immaterial whether land is held under superficies, leases, or titles of ownership. That distinction always exists. (Notes, pp. 48–55.)

On page 21 of the Mémoire the following paragraph appears:

> Les arguments sur lesquels se basait le Gouvernement Japonais pour établir cette distinction ne furent pas admis par les Représentants de l'Allemagne, de la Grande-Bretagne et des Pays-Bas; ils répondirent, par des Notes conçues en termes identiques, que leurs Gouvernements s'appuyant sur les Traités existants ne partageaient pas la manière de voir du Gouvernement Japonais et continueraient à réclamer pour leurs nationaux l'exemption des taxes et des impôts en question.

This again is inaccurate so far as the Dutch Representative is concerned. In a Note which he addressed to the Japanese Minister for Foreign Affairs on November 8, 1901, in reply to the latter's Note of October 21st of that year, the Dutch Minister only expressed his own views and did not declare that the views of the Japanese Government were not shared by his Government. His reply, as will be seen from the copy appended to this Counter-Case, was not couched in terms identical with the Notes of his German, French and British colleagues. [1]

These are the points in Part I of the Mémoire of the

1. See Appendix, p. 3.

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Powers Complainant which seemed to call for special attention at the hands of the Japanese Government in their Counter-Case. Considered separately some of the points do not appear to be of great importance, but taken together, they would, if permitted to remain uncorrected, give rise to erroneous impressions and justify erroneous conclusions regarding the purpose and scope of Japan's Revised Treaties and the views expressed and the actions taken by the Foreign Representatives and communities on the subject of the house-taxes at the time it first became known that those taxes were to be levied on settlement buildings.

Looking at the Mémoire alone, it might reasonably be assumed that the object of the Parties to the Treaties of 1894–1896 was, among other things, to perpetuate the exceptional economic rights acquired by foreigners in Japan under the Treaties of 1858–1869, and especially to maintain in favour of the holders of leases in perpetuity the immunity from taxation which they, in common with all other foreigners, had enjoyed under the regime of consular jurisdiction. But the actual and declared purpose of the Powers concerned in the revision of Japan's ancient Treaties was to do away with the exceptional privileges, exemptions and immunities enjoyed by foreigners as a part of or appurtenant to consular jurisdiction (Case, pp. 87, 88, 91 and 92), and to adopt as the basis of Japan's international relations, the principles of equity and mutual benefit. [1]

That the exemption of settlement buildings from taxation under the old order of things did not exist because of any

1. Preamble of the Revised Treaties,—"Treaties and Conventions between the Empire of Japan and other Powers", 1899, pp. 37, 131 and 257.

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express conventional engagement on the subject nor because such buildings were erected on land held under governmental leases in perpetuity, but, on the contrary, that such exemption was an immunity enjoyed by foreigners as a part of or appurtenant to consular jurisdiction, is shown by the fact that extra-settlement buildings at Kobe were, during the existence of consular jurisdiction, subject to equal taxation, owing to the reservation contained in the communication from the Governor of Hiogo to the foreign Consuls, dated March 30, 1868. (Case, pp. 145 and 149–152, and Appendix, p. 217.) That reservation did not create any right of taxation. The right already existed, but was in abeyance. The reservation simply made it possible for the Japanese Government to exercise the right which, in the absence of the reservation, would have remained dormant until the cessation of consular jurisdiction. (Case, pp. 70–72.)

That the continued exemption of settlement buildings from those imposts, to which all extra-settlement buildings are liable, would be unjust and discriminatory and, consequently, that the subjection of settlement buildings to equal taxation consists with the principles of equity and mutual benefit, is made abundantly clear in Part IV of the Case of Japan.

The existence of consular jurisdiction would, under the old Treaties, have been quite sufficient to protect the settlement land against taxation as it did the settlement buildings, and, equally, the reservation in the letter from the Governor of Hiogo above referred to would have made it possible for the Japanese Government, unless restrained by domestic law, to levy land-taxes on extra-settlement land held by foreigners

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under governmental leases in perpetuity, as they did on extra-settlement foreign-owned buildings. But the fact that no taxes were imposed on such extra-settlement land during the rule of consular jurisdiction, and that the immunity then enjoyed is still continued although the confirmatory clauses of the Revised Treaties are inapplicable to extra-settlement land, points irresistably to the conclusion that even if the confirmatory clauses in question were non-existent, the settlement land like the extra-settlement land would, in virtue of Japanese law, still be exempt from taxation. (Case, pp. 90, 92, 97 and 98.)

It is not unusual to confirm and make enduring by treaty, conditions which already actually exist in virtue of domestic law. The stipulations in the Revised Treaties protecting the settlement property held under leases in perpetuity from taxation, if applied to the property granted by such leases, would be a confirmation by treaty of an existing statutory right, since that property—the land—already enjoys exemption from taxation in virtue of the laws of Japan. But those stipulations would be unjust and inequitable and contrary to the spirit of the new Treaties, if they were held to exceptionally exempt property not granted by such leases from those taxes to which such property in common with other similar property would, under the ordinary revenue laws of the Empire, otherwise be liable.[1] (Case, pp. 85 and 86.)

Turning next to the historical portion of Part I of the Mémoire, the Japanese Government are compelled to say that, in their judgment, it tends to convey an inaccurate idea of the actual course of events. Reading that narrative by itself, it

1. See *supra*, p. 37.

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would be difficult to escape the conclusion that there was from the first a consensus of conviction among foreigners generally, against the asserted right of the Japanese Government to impose the house-taxes in question, and that the attempt to enforce that right immediately gave rise to a general spontaneous movement in protest against the measure, from the Foreign Representatives and the various foreign communities; but such was not the case.

Japan concluded with fourteen Powers, Revised Treaties containing settlement clauses of various forms. (Case, p. 96.) While several of those Powers raised other questions under those clauses, only three seriously contested the right of the Japanese Government to impose house-taxes on foreign-owned settlement buildings.

The total amount of taxes imposed on such buildings for the 34th fiscal year, was *yen* 62,710.99 (*francs* 162,003.18). The share of such taxes borne respectively by the subjects and citizens of the contesting States was as follows:

	yen.	Equivalent in *francs*.
Germany	5,852.37	15,118.60
France	5,240.56	13,538.10
Great Britain	26,669.97	68,897.33
Total	37,762.90	97,554.03

that is to say, about 60 per centum of the entire amount. And the action in opposition to the taxes in question taken by the Representatives of the three Powers named was characterized by a difference in point of time, as wide as was the dissimilarity of the reasons upon which that action rested.

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The first direct objection of the German Representative to the house-taxes was contained in his Note of August 24, 1900 (Appendix, p. 36), and was based upon the erroneous supposition that such taxes might be resorted to as an indirect means of taxing settlement land. (Case, pp. 186–187.) That supposition remained to the last the only ground of opposition on the part of Germany to the imposition of those taxes.

The French Minister by his Notes of November 2, 1899, and June 17, 1900 (Appendix, pp. 68 and 83), called in question the right of the Japanese Government to levy house-taxes on foreign-owned settlement buildings. M. Harmand's contentions were chiefly based on the theory that the settlement clauses of the Revised Treaties were intended to perpetuate the exceptional conditions existing during the regime of consular jurisdiction.

The British Minister in his Memorandum of September 29, 1899, objected to the imposition of Imperial and Local taxes on settlement land and buildings. (Appendix, p. 113.) The grounds of objection were that such land and buildings had previously been exempt from taxation, and that under Article XVIII of the Anglo-Japanese Treaty it was clearly intended that they should continue to be so exempted. The assertions in that Memorandum were based upon a misconception regarding the intentions of the Japanese Government. (Case, p. 166.) In a Note dated May 23, 1900, the British *Chargé d'Affaires* declared, as the reason why his Government contested the right of the Japanese Government to impose the house-taxes in question, that the British Government could not recognize as valid the distinction made by the Japanese

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Government between the right to tax the land and the right to tax the house. The house, he added, is the property of the perpetual lease-holder just as much as the land on which it has been built. (Appendix, p. 129.) It was not until February 25, 1902, that other reasons were assigned in support of the contentions of the British Government on the subject of the house-taxes. (Appendix, p. 150.)

The action or rather the want of action of the International Committee (Case, pp. 162–163) and the Public Meeting of January 19, 1900, touching the question of house-taxes, has already been sufficiently dwelt upon.[1]

It only remains to add, in order to show that even among those directly interested diverse views were entertained, that more than 40 per centum of the settlement house-taxes imposed for the first period after the new Treaties took effect, were collected without recourse to forcible measures and that a number of settlement house-owners still continue to pay the house-taxes, although the forcible collection of such taxes has been for the time being suspended by the Note from the Minister for Foreign Affairs of August 28, 1902. (Appendix, p. 14.)

1. See *supra*, pp. 30–32.

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PART III.

IN REPLY TO PART II OF THE MÉMOIRE OF THE POWERS COMPLAINANT.

CHAPTER I.

Not only is Chapter I, Part II of the Mémoire headed "contrats passés entre le Gouvernement Japonais et les concessionaires étrangers," but the whole argument of the Party Complainant respecting perpetual leases is based on the theory of bilateral contracts creating mutual relations of rights and obligations between the Japanese Government on the one hand, and the holders of property under leases in perpetuity on the other. This, it is submitted, is a misconception. If by title-deeds of leases in perpetuity *jus in personam* were created between the Japanese Government and the lessees of the settlement land, as in cases of contracts known in the Roman law as *locatio conductio rerum*, the theory would hold good. But by an examination of the terms of the leases in perpetuity actually used since the establishment of the Settlements (Appendix, pp. 245–261), it will be perceived that they granted rights of perpetual enjoyment of land to the original grantee and his heirs, executors, administrators and assignees, subject to certain conditions. Those conditions were essentially three, namely: (1) payment of annual rent; (2) non-transference of the property granted to any person other than a

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subject or citizen of a Power having a Treaty with Japan, without an official act of authorization from the Japanese and Consular Authorities; and (3) observance of regulations made by the Japanese Local Authorities and the Consuls in conjunction. So long as those conditions were faithfully observed, each holder of land under a lease in perpetuity had in the land thus granted a *jus in rem* which was transmissible to his heirs and assignees, subject only to the right of eminent domain of the Japanese Government. It is this *jus in rem* which was protected by the confirmatory clauses of the Revised Treaties. Under the regime of the old Treaties, no more than at the present date, could the Japanese Government compel a lessee to hold the leased land against his will, when he desired to make over his interest to a subject or citizen of a Treaty Power. Nor could the Japanese Government hold the original grantee responsible for the payment of the annual rental reserved in the title-deed, when he had duly transferred his rights in the land to another person or had surrendered his title-deed. The leases in perpetuity were executed by the authorized agents of the Japanese Government alone, and were not signed by the lessees. The position of the holder of such a lease is more akin to that of the owner of a piece of land whose right of ownership is subject to certain specified conditions, than to that of a lessee who holds land under a contract of *locatio conductio*. It was no doubt this idea that found expression on page 19 of the Mémoire in the following terms:

> Les baux perpétuels * * * concèdent des droits de propriété * * *.

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Leases in perpetuity created under title-deeds issued by the Japanese Government in pursuance of the stipulations contained in the Arrangements relating to the Settlements, are grants of rights *in rem* in land and can not be explained by the theory of bilateral contracts.

Chapter I, which is now under examination, begins thus:

> Jusqu'en 1899, la condition des étrangers au Japon fut régie par un droit international spécial soustrayant leurs biens et leurs personnes aux lois Japonaises.

That a system of special international law, apart from the general rules of international law governing the intercourse of nations, existed and was applicable to foreigners in Japan under the regime of the old Treaties, is not known or admitted by the Japanese Government; neither has the Party Complainant attempted a definition of its object and nature. The Treaties which were in force until 1899, recognized the right of foreign Consuls to exercise jurisdiction in civil and criminal matters in cases where their nationals were defendants. The system thus created in virtue of treaty stipulations was known as consular jurisdiction. It is specifically to those stipulations that the Mémoire refers in support of the contention, that up to 1899 the condition of foreigners in Japan was regulated by special international law.

For the same reason that led the Japanese Government to cite in their Case (pp. 13–14) the stipulations of the Austro-Hungarian Treaty of 1869 bearing upon the subject of the right of foreigners to lease land and own buildings, they are now induced to quote the jurisdictional clauses of the same Treaty, which read as follows:

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ARTICLE V.

All questions in regard to rights, whether of property, or of person, arising between Austro-Hungarian citizens residing in Japan, shall be subject to the jurisdiction of the Imperial and Royal Authorities. In like manner the Japanese Authorities shall not interfere in any question which may arise between Austro-Hungarian citizens and the subjects of any other Treaty Power.

If an Austro-Hungarian citizen has a complaint or grievance against a Japanese subject, the case shall be decided by the Japanese Authorities.

If, on the contrary, a Japanese has a complaint or grievance against a citizen of the said Monarchy, the case shall be decided by the Imperial and Royal Authorities.

Should any Japanese subject fail to discharge debts, incurred to an Austro-Hungarian citizen, or should he fraudulently abscond, the competent Japanese Authorities will do their utmost to bring him to justice, and to enforce recovery of the debts. And, should any Austro-Hungarian citizen fraudulently abscond or fail to discharge debts, incurred by him to a Japanese subject, the Imperial and Royal Authorities will do their utmost to bring him to justice, and to enforce recovery of the debts.

Neither the Austro-Hungarian nor the Japanese Authorities shall be held responsible for the payment of any debts contracted by Austro-Hungarian or Japanese subjects.

ARTICLE VI.

Austro-Hungarian citizens, who may commit any crime against Japanese subjects, or the subjects of any other nation, shall be brought before the Imperial and Royal Consular Officer, and punished according to the laws of their country.

Japanese subjects who may commit any crime against Austro-Hungarian citizens, shall be brought before the

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Japanese Authorities and punished according to Japanese laws.

The foregoing stipulations represent the sum of all the jurisdiction granted by Japan to the Treaty Powers.

But it remained for each acquiring State to determine for itself the manner in which the ceded jurisdiction was to be exercised, as well as the organization of the competent tribunals. Consequently, the rules of procedure and the constitutions of the different Consular Courts, following in these respects the juridical conceptions and institutions of the various countries concerned, were naturally wholly lacking in uniformity.

An equally pronounced diversity in practice existed on the subject of the laws to be administered by the Consular Courts. Some of the Treaty Powers admitted that the laws of Japan were generally binding on foreign residents and were enforcible by the Consular Courts. Others maintained that such laws stood, *vis-à-vis* the Consular Courts, on the footing of foreign laws and could only be nationalized by a process of sanction by the Diplomatic Representatives, while several of the Powers held that the laws of Japan were, generally speaking, wholly inapplicable to their nationals.

This was the system which prevailed and regulated the rights and relations between foreigners, and between foreigners and Japanese, during the existence of consular jurisdiction. It was destitute of every attribute, of every element which goes to make up the rules known as International Law. To call such a system—a system in respect of which no common

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understanding or practice ever prevailed among the Powers—"droit international spécial" is, it is submitted, to apply to it a wholly inappropriate and misleading title.

While the conflicting conditions above described were actually co-existent under the Treaties of 1858–1869, there were two points upon which a common accord seemed to prevail:

I. In no instance did the Consular Courts, unless conventionally required to do so, enforce the revenue laws of Japan, although the then existing Treaties contained no stipulations exempting foreigners from the obligation to pay taxes.

II. On the other hand, there was no disposition on the part of those Courts, so far as the Japanese Government are aware, to replace the laws of Japan relating to immovables by the real property laws of any foreign country.

The first of the above points has already been sufficiently explained (Case, pp. 70–72), but having regard to the novel contention of the Party Complainant that the leases in perpetuity grant, on the one hand, rights of property and are, on the other, outside the domain of the laws of Japan (Mémoire, p. 19), a more complete exposition of the views of the Japanese Government touching the second point seems desirable.

Leases in perpetuity granted by the Japanese Government exist in favour of foreigners in respect of land in the mixed residence zone at Hiogo. (Case, pp. 145–155.) The only distinction between those leases and the settlement grants consists in the fact that the forms of leases, rates of rent, and other conditions contained in those leases, were in

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each case a matter of separate agreement between the parties concerned, whereas the forms of leases, rates of rent, and some of the conditions of tenure in respect of the settlement land were determined by international arrangements.[1]

It will hardly be claimed, it is imagined, that the extra-settlement leases in question are outside the domain of Japanese law. The only ground for drawing a distinction in this regard between the settlement and the extra-settlement leases, is the circumstance that the former were granted in pursuance of Arrangements subsidiary to the Treaties, while the latter were issued independently of those Arrangements. The Arrangements in question were wholly and without qualification or reservation abrogated by the repealing clauses of the Revised Treaties (Case, pp. 87–88 and 91–92); but even if they were in full force, they would be searched in vain for any provision intended to determine the legal relations of parties who may have rights and interests in the leased property to which they had reference.

If the settlement leases in perpetuity are outside the domain of Japanese law, the various dismemberments of the property and the right to their enjoyment are determined by some law. There is no special international law on the subject. The subsidiary Arrangements relative to the Settlements, even if they were in full force, would manifestly be entirely insufficient.

This process of elimination leaves it to be assumed that the Party Complainant, in asserting that the settlement leases are outside the domain of Japanese law, had intended to

1. See *supra*, p. 38.

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claim that those leases are within the domain of the laws of the several Treaty Powers.

Not only would the admission of such a claim create a hopeless confusion and uncertainty, but it would do violence to legal principles which are universally recognized and accepted.

What foreign law, for instance, do the Powers Complainant assert would prevail? Would it be the national law of the original lessee, or of the lessee when the new Treaties took effect, or of the present lessee? Would the law to be applied change with each transfer of the lease? Nearly 21 per centum of all the buildings in the former Settlements are owned by persons other than the holders of the leases in perpetuity. (Case, p. 175.) Among such owners there are several Japanese subjects. What law in such cases would be invoked to determine the rights and relations between the lease-holders and the house-owners, or between the lease-holders and third persons?

In the estimation of the Japanese Government there is, as there always has been, but one law by which the rights and the interests in immovables in Japan can be determined. That is the *lex loci rei sitæ*.

The law of Japan of June 15, 1898, containing general dispositions relating to the application of laws, provides in Article X that —

> *Jus in rem* relating to movables and immovables and other rights for which registration is required, are governed by the law of the place where the things forming objects of such rights are situated.

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Article III of the French Civil Code declares that—

> Les immeubles, même ceux possédés par des étrangers sont régis par la loi française.

The laws of Germany and Great Britain are in accord with the foregoing statutory enactments. But more directly to the point under discussion was the Notification issued by the Superintendency of Trade in Hongkong on March 10, 1856, in which the following opinion of the British Officers of the Crown relating to the question of law applicable to cases of cession of property by Chinese to British subjects, was made public:

> We are of opinion that British tribunals and judicial authorities in China are bound to observe the rules and principles of public or international law, as they are settled and received by the common consent of European nations.
>
> We do not concur in the conclusion of the Acting Attorney-General, that the Chinese are to be considered as beyond the pale of civilized nations.
>
> In all questions that may come before any British tribunal in China relating to the ownership or occupation of houses or lands, lying within the dominions of the Emperor of China, the law and custom of China, if they can be ascertained, must govern the decision, unless by the terms of the contract the law or usage of some other country be imported into it; and if in any such case the Chinese law can not be ascertained, the decision must be governed by the principles of natural justice. There is no pretence for the introduction of the English law of real property.
>
> It is a universal principle of law in Europe, that in all questions respecting immovable property, the *lex loci rei sitæ* prevails; and we think it both right and useful

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that the same rule should be acted on in the administration of justice in China.[1]

The conditions governing the status of foreigners in China were then, as they are now, precisely the same as those that existed in Japan under the regime of the old Treaties. If it was then both right and useful that the principle of the *lex loci rei sitæ* should be acted on in the administration of justice in China by British Courts, it can not be less right or useful to admit that the same universal principle prevails in the administration of justice in Japan by Japanese Courts. If there was not, in 1856, in the presence of consular jurisdiction any pretence for the introduction of the English law of real property into China, there can not now, in the presence of exclusive Japanese jurisdiction, exist any pretence for the introduction into Japan of the real property laws of any foreign State.

And the Japanese Government have no doubt that, in case any question of right under the settlement leases in perpetuity were to come before a Court in either Germany, France or Great Britain, such Court would hold that those leases are governed by the laws of Japan.

Again, it is repeatedly admitted in the Mémoire (pp. 26, 30 and 42–43), that the inalienable right of sovereignty and superior ownership as well as the right of eminent domain in respect of the leased land in question, were and are vested in the Japanese Government. It is not perceived how it is possible to reconcile these admissions with the contention that the settlement leases in perpetuity, which practically grant the

1. See Appendix, p. 49.

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rights of ownership in the leased land, are above all, outside the domain of Japanese law.

Finally, land and buildings have immemorially been regarded in Japan, for all purposes, as independent and separate pieces of property. (Notes, pp. 48–55.) That distinction, the Japanese Government firmly believe, is good against the whole world, when the question at issue relates to property in Japan.

The Mémoire (p. 23) next declares:

> Les Traités de 1894 et 1896, en faisant rentrer les étrangers dans le droit commun Japonais, abolirent leurs priviléges, mais respectèrent certains droits dont la jouissance perpétuelle leur avait été formellement garantie.

It then adds:

> Seule, l'étude du régime antérieur aux Traités de 1894–1896 et des Actes successifs qui ont reconnu aux étrangers les droits exceptionnels maintenus par les Traités, permet de fixer avec exactitude l'étendue et la portée de ces droits.

A clear distinction is here drawn between the "privileges" and the "rights" formerly enjoyed by foreigners. The former, it is admitted, were abolished by the Treaties of 1894–1896, but certain rights—namely, those the perpetual enjoyment of which had been expressly guaranteed,—it is contended, were maintained by those Treaties.

The distinction between "rights" on the one hand, and "privileges, exemptions and immunities" on the other, is recognized by the Japanese Government as well as by the

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Revised Treaties. But in order to appreciate the full significance of the distinction, it is necessary to examine the negotiations anterior to the conclusion of the Revised Treaties.

On the 2nd April, 1887, the Japanese Government presented to the Treaty Revision Conference then sitting at Tokio,[1] for consideration, a Draft Treaty of Commerce and Navigation, Article XVIII of which read as follows:

> His Majesty ..... renounces all privileges and immunities hitherto enjoyed by His subjects in Japan under the existing Treaties and Arrangements, which are not continued or confirmed by this Convention, or by the Jurisdictional Convention of even date herewith.
>
> But the aforesaid privileges and immunities, as far as they relate to the requirement of concessions or licenses for undertaking and prosecuting any industrial or commercial business or occupation, as well as in respect of the payment of Imperial and local taxes, duties, and license fees, shall still be valid within the several limits, in which ..... subjects have hitherto enjoyed the right of renting and occupying real property, so long as consular jurisdiction remains in force and no longer.[2] It is, however, understood that the foregoing privileges and immunities do not include the right to manufacture, fabricate, or prepare articles for Japanese consumption, such as fish, *saké*, tobacco, *shoyu*, and *mirin*, or to retail wine, beer, or other spirits.

The foregoing clause was modified in the following sense by the Commercial Committee of the Conference:[3] (Case, pp. 74–75.)

1. See Protocol No. 25 of the Conference, p. 25, and Annex to the same, p. 11.
2. The proposal Jurisdictional Convention provided for the eventual abolition of consular jurisdiction.
3. See Protocol No. 27 of the Conference, Annex III, pp. 14–15.

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Article XXIII.

All privileges and immunities which ..... subjects or citizens have hitherto enjoyed in Japan, in virtue of the existing Treaties and Arrangements, are maintained pending the duration of the present Treaty, in so far as they are not abrogated by the stipulations of this Treaty or the Jurisdictional Convention of this date.

Article XXIV.

If during the period consular jurisdiction still continues, ... subjects or citizens manufacture, fabricate, or prepare within the Settlements fish, *saké*, tobacco, *shoyu*, *mirin*, wine, beer or spirits, they shall pay the same dues and taxes as Japanese subjects engaged in a similar business.

Any ..... subject or citizen who desires to retail wine, beer or spirits must take out the same license and pay the same license fee as Japanese subjects; this license can never be refused without just and reasonable cause.

The Conference adjourned without completing its labours (Case, p. 76), and the project which it considered as satisfactory was replaced by the scheme of 1888, in which the following stipulations were substituted in place of the clauses above quoted:[1]

Article XX.

All privileges and immunities which ..... subjects or citizens have hitherto enjoyed in Japan, in virtue of the existing Treaties and Arrangements, are maintained during the continuance of consular jurisdiction, in so far as they are not abrogated by the stipulations of this Treaty, and from the date consular jurisdiction ceases to

1. British Parliamentary Paper, "Japan, No. 1 (1894)," p. 9.

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exist all such privileges and immunities shall be regarded as abrogated, unless maintained by this Treaty.

ARTICLE XXI.

During the continuance of consular jurisdiction..... subjects or citizens in Japan shall, within the territorial limits of such jurisdiction, be liable only to such taxes, rates, fees, duties, and charges as are imposed upon Japanese subjects in respect of industrial and manufacturing enterprises. From the date of the exchange of ratifications of this Treaty, outside of the territorial limits of consular jurisdiction, and from the date consular jurisdiction ceases to exist throughout the entire Empire, ... subjects or citizens shall be liable to the same taxes, rates, fees, duties, and charges as Japanese subjects.

In the British counter-proposals of 1889, Article XX above quoted was continued without change as Article XXIII, and the above mentioned Article XXI was replaced by the following:[1]

ARTICLE XXIV.

If during the period consular jurisdiction still continues, British subjects manufacture, fabricate, or prepare within the Settlements fish, *saké*, tobacco, *shoyu*, *mirin*, wine, beer, or spirits, they shall pay the same dues and taxes as Japanese subjects engaged in a similar business.

Any British subject who desires to retail wine, beer, or spirits must take out the same license and pay the same license fee as Japanese subjects; this license can never be refused without just and reasonable cause.

From the date of the entire cessation of consular jurisdiction, in conformity with Article XVIII of this Treaty, British subjects shall be liable to the same taxes, rates, fees, duties, and charges as Japanese subjects.

1. British Parliamentary Paper, "Japan, No. 1 (1894)," p. 21.

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The British proposals of 1890 contained the following stipulations bearing on the subject:[1]

ARTICLE I.

All rights, privileges, and immunities enjoyed by British subjects under previous Treaties are, in so far as they are not abrogated or modified by the provisions of this Treaty, or of the Protocol signed this day, hereby expressly maintained and confirmed.

PROTOCOL, SECTION I.

* * * *

It is further agreed * * * that with the cessation of British consular jurisdiction all privileges and immunities in regard to jurisdiction which British subjects in Japan may have enjoyed under previous Treaties shall thereupon cease to exist.

Naturally the foregoing stipulations did not satisfy the Japanese Government, and in their project of 1893 they substituted in place of them, the clause which appears in the Anglo-Japanese Treaty as Article XX.[2] (Case, pp. 87–88.)

In the course of the negotiations which resulted in the conclusion of that Treaty, the question was on several occasions brought under discussion.

The British Foreign Office Memorandum of April 2, 1894,[3] contains the following:

Turning to the draft Treaty presented by Viscount Aoki, Mr. Bertie then pointed out that Article I of Lord Salisbury's draft Treaty of 1890, which con-

1. British Parliamentary Paper, "Japan, No. 1 (1894)," pp. 58 and 64.
2. Ibid., pp. 80–81.
3. Ibid., p. 93.

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tained the express stipulation that all rights and privileges not specially abrogated in the new Treaty then proposed should be maintained, did not appear in the new draft. Her Majesty's Government desired the insertion of some stipulation to this effect.

In reply to the above remarks of Mr. Bertie, Viscount Aoki, in a Memorandum dated April 11, 1894, made the following observations:[1]

The first point raised by Mr. Bertie with respect to our draft of the Treaty referred to Article XVIII, which declares that the new Treaty is to be substituted to all former Treaties, Conventions, &c., agreed upon hitherto between Great Britain and Japan. Mr. Bertie proposed to retain the wording of Lord Salisbury's draft, which reads: "That all rights, privileges and immunities hitherto enjoyed by British subjects under previous Treaties are, as far as they are not abrogated or modified by the provisions of this Treaty or of the Protocol signed this date, hereby expressly maintained and confirmed."

Mr. Bertie did not enter into any details as to what these rights were which Her Britannic Majesty's Government had thereby in view, and the undersigned, after a careful examination, failed to discover a single point which the British Government, in the interest of British subjects, could possibly desire to maintain. The proposed return to the former draft might therefore appear to be without significance.

However, in consideration of the earnest wish of his Government for the adoption of clear and indisputable terms, the undersigned regrets to be obliged to declare that he is not in a position to accept any modification of Article XVIII of the Japanese draft.

The following considerations will, the undersigned trusts, explain why it would be injudicious to make any alteration in the tenor of the Article: The new

1. British Parliamentary Paper, "Japan, No. 1 (1894)," p. 96.

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Treaty and Protocol will enumerate all concessions which can reasonably be expected from the Japanese Government, and the privileges of British subjects residing in Japan are clearly defined. It is, besides, declared equally clearly that consular jurisdiction is to cease under certain conditions, and with this a state of intercourse in conformity with the law of nations is recognized.

The abolishment of consular jurisdiction has for its logical consequence that those immunities which were hitherto defined (right or wrong) as exterritorial rights cease as far as non-diplomatic persons are concerned, and the sovereign rights of the State now at last come fully into force.

But by the substitution of Lord Salisbury's draft a false impression might be created, as if in reality some of the former exterritorial rights would still survive. If there are really any rights, privileges, or immunities worth preserving, which could be maintained in view of the adoption of the new principles, it would be much better to enumerate them. But the undersigned is sure that the most searching inquiries would fail to produce a single concession which, under the new state of affairs, could be of any practical utility.

The former concessions are either surpassed or superseded by the advantageous terms of the new Contract, which opens the whole country to British trade and residence.

The following further reference to the question is contained in the British Foreign Office Memorandum of April 24, 1894:[1]

Article XVIII.—Mr. Bertie said that the wording of this Article[2] reminded him of the omission in the

1. British Parliamentary Paper, "Japan, No. 1 (1894)," p. 101.

2. Article XVIII of the Japanese proposal of 1893, which was adopted as Article XX in the Anglo-Japanese Treaty of 1894.

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present draft of the stipulation contained in the previous proposals of Lord Salisbury, by which all rights and privileges not expressly abrogated were to be maintained. Her Majesty's Government would prefer the insertion of some stipulation to this effect, and there was a precedent for this.

Viscount Aoki said that, as he had already pointed out in his Memorandum of the 11th April, he had failed to discover what rights Her Majesty's Government were desirous of maintaining.

It was explained to him by Mr. Bertie that this being a case where we were asked to give up engagements interminable in their character for a terminable Treaty, it was necessary to exercise every precaution. There might be certain rights and privileges which, though not strictly speaking Treaty rights, had grown up by custom during the operation of existing Treaties, and these it was desirable to protect. If, however, the Japanese Government were prepared to meet the views of Her Majesty's Government with regard to the insertion of the so-called "interport" trade provision in Article X, and would also favourably consider their views as to the question of the ownership of property in the Foreign Settlements, Her Majesty's Government might see their way to waiving the objections raised.

Viscount Aoki said that he quite understood the point as it was now put before him, and would communicate with his Government on the matter.

In the British Foreign Office Memorandum of May 25, 1894, there appears the following additional reference to the point:[1]

At a previous meeting, he [Mr. Bertie] had pointed out to Viscount Aoki that Her Majesty's Government might see their way to acquiescing in the omission of Article I of Lord Salisbury's draft Treaty, if the Japanese Government met them on other points,

1. British Parliamentary Paper, "Japan, No. I (1894)," p. 113.

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> amongst which was this question of "interport" trade. He did not think that the Japanese Government's concessions in this direction went far enough.

The British Foreign Office Memoranda make no further allusion to the matter, and it may consequently be assumed that the question was not again discussed.

The Treaty as signed did not contain Article I of Lord Salisbury's draft or any stipulation to that effect. It abrogated all the Treaties and Conventions of Commerce between Japan and Great Britain and all Arrangements and Agreements subsidiary thereto. It abolished consular jurisdiction and all the exceptional privileges, exemptions and immunities previously enjoyed by British subjects as a part of or appurtenant to such jurisdiction, and finally it confirmed the settlement leases in perpetuity and guaranteed the property held under those leases against taxation.

The Japanese Government in seeking a revision of their ancient Treaties had no wish or intention of disturbing the vested rights of foreigners. They, accordingly, had no hesitation in uniting with the German Government in the declaration of interpretation of the meaning of the new Japanese-German Treaty on the subject of such rights, which appears in the complementary Notes of April 4, 1896. (Mémoire, p. 40 and Appendix, pp. 266–267.)

The French Government in recasting the Japanese proposals of 1893 (Case, p. 91) omitted the repealing clause of the draft corresponding to Article XX of the Anglo-Japanese Treaty, and inserted in its place the following provision:

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> Toutes les dispositions des Traités et arrangements conclus antérieurement entre la France et le Japon qui ne sont pas annulés ou modifiés par le présent Traité demeurent en pleine et entière vigueur.[1]

The Japanese Government firmly opposed the amendment, but, following the course pursued in the case of the Treaty with Germany, authorized the Japanese Delegate to make a declaration in the sense of that attributed to him on page 40 of the Mémoire. The French Delegates, taking note of that declaration, consented to the suppression of the amendment and the introduction of the clause which stands in the Franco-Japanese Treaty as Article XXIII.

Thus it was reciprocally admitted by Japan and Germany, that the *legally acquired rights* of German subjects in Japan and of Japanese subjects in Germany remained unaltered; and the Japanese Government also expressed the conviction that all *rights* of French residents *acquired under the old Treaties* and *not incompatible with the new Treaty* continue unaffected by the Revised Treaty.

No declaration of similar import was made by the Japanese Government regarding their other new Treaties, but they believe that the subjects and citizens of all the Treaty Powers in Japan are in equal measure protected in the enjoyment of those rights which had been legally acquired.

Among the rights of foreigners which are thus maintained, are the rights in the land held by them under governmental leases in perpetuity and in the buildings owned by

1. Annex to the Procès-Verbal of the 2nd meeting of the Commission for the Revision of the Treaties between Japan and France.

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them. Their rights of property are in both instances fully guaranteed, the right of lease in the one case and the right of ownership in the other. Their land is protected against any enhancement of rent and their buildings against unequal taxation.

The land held under governmental leases in perpetuity by foreigners has always been exempt from taxation in virtue of the laws of Japan. Such land would also have enjoyed complete immunity from taxation, during the existence of the Treaties of 1858–1869, as a part of consular jurisdiction. The exemption in question would have continued by force of Japanese law after the cessation of consular jurisdiction. The Japanese Government receiving rent in respect of the leased land in question in their quality as proprietor of the land, could not justly in their sovereign capacity subject such land to additional burdens in the shape of taxes. Taxation under such circumstances would be tantamount to an increase in the rate of rent. Accordingly, the clauses in the Revised Treaties exempting property held under governmental leases in perpetuity from taxation had the effect of placing a right existing in virtue of domestic law on the footing of treaty engagements.

As in the British Treaty, so in the Treaties with Germany and France as well as with all the other Treaty Powers, all the exceptional privileges, exemptions and immunities enjoyed by foreigners as a part of consular jurisdiction were expressly and completely abolished.

Among the immunities thus brought to an end was exemption from taxation. There was nothing either in the Treaties of 1858–1869 or in the laws of Japan which expressly

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or by necessary intendment conferred such exemption. It existed solely as a consequence of consular jurisdiction. With the cessation of such jurisdiction, therefore, such exemption ceased, and without any enabling legislation whatever the revenue laws of the Empire became *ipso facto* applicable to foreigners and to their property. Thus it was that foreign residents, upon the coming into force of the new Treaties, were called upon to pay the income and business taxes and all the other various Imperial, Local and Municipal imposts, from which they had previously been exempt, including settlement house-taxes. They were not called upon to pay land-taxes in respect of their leased land, because the land belongs to the State and all land-taxes in Japan are payable by the owners of the land.

The buildings in respect of which the taxes now in controversy were imposed, stand upon settlement land held by foreigners under governmental leases in perpetuity. The leased land is, in all cases, subject to a fixed rate of rent which remains unaffected whether the land is built upon or not. The buildings are the absolute property of the lessees of the land on which they stand, or of persons holding under such lessees. The Japanese Government have never received either directly or indirectly any rent in respect of those buildings. The owners of the buildings in question enjoyed exemption from taxation in respect of their buildings while consular jurisdiction prevailed, for the same reason that they enjoyed exemption from taxation in all other directions.

The reasons assigned by the Powers Complainant, in the actual circumstances of the case, for drawing a distinction in

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the matter of the liability of foreigners, between the settlement house-taxes and other imposts, do not appeal to the sense of right and justice of the Japanese Government.

If the fact that foreigners were exempt from settlement house-taxes during the regime of consular jurisdiction can be advanced as a valid objection to the present imposition of those taxes, then the fact that foreigners enjoyed immunity from taxation generally under the old Treaties would stand as an insurmountable barrier to the collection, under the new Treaties, of income, business and other taxes from the subjects and citizens of the Treaty Powers.

If exemption of foreigners from settlement house-taxes is, without any express engagement on the subject, to be regarded as a vested right acquired under the old Treaties and continued under the new, then immunity of foreigners from all other taxes must also be so regarded.

If, because of the former existence of consular jurisdiction, the governmental leases in perpetuity of settlement land are outside the domain of Japanese law, and if in consequence the distinction between land and buildings recognized by the laws of Japan is, in the matter of the imposition of taxes, inapplicable to settlement land held under governmental leases in perpetuity and to the buildings thereon, then for the same reason the governmental leases in perpetuity of extra-settlement land are also outside the domain of Japanese law and such extra-settlement land and the buildings thereon are inseparable for the purposes of taxation.

If the governmental leases in perpetuity of settlement land include the buildings thereon so as to exempt such build-

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ings equally with the land from taxation, then the governmental leases in perpetuity of extra-settlement land also include the buildings thereon and extend to such buildings the same immunity from taxation as is enjoyed by the land itself.

And yet, apart from the settlement house-taxes, foreigners generally pay all taxes without complaint, and they have since 1888 paid without objection house-taxes in respect of buildings standing on extra-settlement land held under governmental leases in perpetuity.

Exemption of the land held under governmental leases in perpetuity from taxation was, in the opinion of the Japanese Government, a right existing during the operation of the Treaties of 1858–1869 in virtue of Japanese law, which is continued under the Treaties of 1894–1896 in virtue of that law and, so far as the settlement leased land in question is concerned, in virtue also of the settlement clauses of those Treaties. Exemption of the buildings standing on such land from taxation, on the contrary, was an exceptional immunity springing from consular jurisdiction, which ceased with the cessation of the jurisdiction upon which it depended.

And the Japanese Government can not for a moment believe that either of the Powers Complainant would be prepared to admit as a principle of administrative law having general application, that the mere fact of an exceptional exemption from a given tax in the past, arising from causes other than express grant, could be set up as a perpetual bar to the imposition of such tax in the future.

They are equally well persuaded from the following references which they permit themselves to make, that the

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actual practice which prevails in some parts at least of the dominions of the Powers Complainant, is not inconsistent with the rule which the Japanese Government contend is applicable to the late Settlements, namely: that privately owned buildings standing on State owned land are distinguishable from the land for purposes of taxation, and that independently of the question of the treatment extended to the land itself such buildings are liable to separate taxation.

Regarding the practice in Germany, the following citations are taken from a work by F. G. Gauss, Inspector General of Cadastre of Prussia, entitled "Taxes on Buildings in Prussia according to the Law of May 21, 1861, and the Regulations made thereunder." [1]

Regulation of February 1, 1878, relating to the assessment of building-tax.

10. Buildings which form part of the property owned by the Empire or the State, are no less exempt from building-taxes, more especially buildings which form part of the Crown-Domain or of the smelting, mining or saltworks, etc., owned by the State, and the buildings of the Prussian Seehandlungssocietaet, etc.

Buildings which are erected and owned by private persons on land belonging to the Empire or the State, on the other hand, are not entitled to exemption from taxation in the same manner as buildings of the Empire or the State; they are, on the contrary, always subject to building-taxes. [2] Among others the so-called "superinventory-buildings" belonging to the lease-holders of the Crown-Domain, etc., belong to this

1. F. G. Gauss, Königl. Preuss. General-Inspektor des Katasters,—"Die Gebäudesteuer in Preussen nach dem Gesetze vom 21. Mai 1861 und den zur Ausführung desselben ergangenen Vorschriften," 2nd Edition, Berlin, 1882.

2. The same rule obtains in Japan. (Case, pp. 135–136.)

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category so long as such buildings belong to the leaseholders.[1]

Extract from the decision of the Prussian Minister of State for Finance against the proprietor of a bathing place, dated September 27, 1867.

The objection raised on the ground that the buildings in question are not registerd in the Mortgage-Book, and that the stretch of water surface is not owned by you, is inadmissible. For the building-tax is imposed universally and without regard to special legal relations, not only upon buildings erected on one's own land but also upon buildings standing on land in respect of which one has only the right of temporary use against the payment of rent or other equivalents. The exceptions to this rule are only such buildings as are pointed out in § 3 of the Law relating to building-tax; and the buildings now under consideration do not belong to the list of exceptions.[2]

Extract from the decision of the Prussian Minister of State for Finance, dated August 15, 1868.

The provision of No. 2, § 3 of the Law relating to building-tax, in which it is provided that the buildings owned by municipal corporations for public service or use shall be exempted from taxation, is an exception to the rule and must be interpreted strictly. Only those buildings, therefore, which are primarily, directly and continuously used for public service or use and exclusively owned by such corporations, can be exempted from taxation. It naturally follows that all kinds of buildings, which are not exclusively used for public purposes of the Communes but are used for certain purposes of profit, are liable to taxation.[3]

1. See p. 48 of the work referred to.
2. Ibid., p. 37.
3. See p. 58 of the work referred to.

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The Japanese Government are led to believe from investigations which they have caused to be made, that the competent French Authorities in Madagascar are now imposing house-taxes under conditions which very closely resemble those existing in the late foreign Settlements of Japan.

It appears that prior to the annexation of Madagascar by France in 1896, foreigners possessed by treaty the right to lease land and to own buildings. At the present time, especially in Tamatave, many leases of government land for building purposes are in force. Those leases were granted for terms of years against the payment of a certain sum as compensation for the whole term; but as they are indefinitely renewable at the option of the lessees upon payment of the same amount as in case of the original leases, they are practically leases in perpetuity. The land is exempt from taxation, and the buildings standing on the land enjoyed a like immunity under the old order of things. In 1900, however, a system of municipal house-taxes was established for Tamatave and, while the land itself is free of any charges other than the payment of the sum originally fixed for renewal of such leases, the privately owned buildings standing on the leased government land above referred to were required, equally with other privately owned buildings, to pay the house-taxes in question.

In British India, but more especially in Bengal and the North West Provinces, agricultural land is largely held under a system of perpetual leases granted by the Government, subject either to a permanently settled rate of rent or to a rate of rent which is periodically revised. In the Bombay

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Presidency, land for building-sites is leased by the Government for a fixed term of 99 years subject to a fixed rate of ground-rent. The right of lease is usually disposed of by auction, and the leases ordinarily granted contain building conditions similar to those appearing in the Nagasaki Land Regulations of 1860 (Appendix, pp. 196–197), to which the Powers Complainant seem to attach high importance. Nevertheless, it is provided in the Bombay District Municipal Act (No. III of 1901), that any Municipality may impose for municipal purposes a rate on buildings or lands or both, and the Japanese Government are informed that in virtue of that Act rates are actually imposed by different Bombay Municipalities on privately owned buildings standing on land held under the governmental leases above described.[1]

In the presence of these examples it is difficult to understand how it can be said, either that buildings and the land on which they stand are indivisible for the purposes of taxation, or that ground-rent paid to the Government includes all taxes in respect of the buildings erected on the leased ground.

In Part II of their Case the Japanese Government have fully and carefully examined all the various engagements of an international character by which foreigners acquired during the existence of the Treaties of 1858–1869, certain rights which are continued under the Treaties of 1894–1896. They found those rights, so far as they relate to immovables, to consist of the right of leases in perpetuity of land subject to a constant rate of rent and free from taxation or any changes in

1. See Appendix, pp. 50–55.

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the conditions of tenure, and the right of ownership of buildings under a guarantee of national and most favoured nation treatment in the matter of taxation. Believing that their examination of the engagements in question was both impartial and exhaustive, they do not think it would be useful for them to follow at this time the Powers Complainant in their study of the same subject. But they find it necessary to consider some of the observations made by the Powers Complainant in the course of that study.

In the foot-note on page 23 of the Mémoire, by way of explanation of the clause, "sie sollen das Recht haben, daselbst Grundstücke zu miethen und Häuser zu kaufen," appearing in Article III of the Treaty with Prussia of 1861, it is stated:

> Le droit accordé aux étrangers d'acheter les maisons édifiées sur les terrains qu'ils louaient avait pour but de leur permettre, s'ils le désiraient, de démolir ces maisons, construites à la manière japonaise et pour eux inutilisables.

The exact force and object of this comment is not perceived. But it may be pointed out that Article III of the Treaty referred to, as well as the same Article of the French and British Treaties of 1858, granted the right of leasing land and of purchasing and erecting buildings on the land leased. As by purchase ownership in the buildings passed to the purchasers, they had naturally the right to demolish the structures if they so desired, but they were also free to make any lawful use of such buildings they saw fit,

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and in fact in the earlier days of the late Settlements the purchased Japanese houses were frequently preserved for purposes of residence and business. It is apparent that those treaty engagements recognized the right of the subjects and citizens of the Treaty Powers to *lease* land and *own* buildings.

The Japanese Government in considering in their Case the conventional engagements relative to the several foreign Settlements, called attention to the dissimilarity in form and substance which characterized the different settlement Arrangements, and at the same time gave a summary of the conditions which were common to all the Settlements. (Case, pp. 15–16.)

Touching the above point the Mémoire at page 24 has the following observations:

> Les conditions dans lesquelles les étrangers s'établirent sur les diverses concessions ne furent pas déterminées d'une manière rigoureusement uniforme. Un certain nombre de règles essentielles se retrouvaient cependant partout à peu près les mêmes.

Because of the dissimilarity above referred to, the Japanese Government found it necessary to examine separately the organic Arrangements of the various Settlements. The Powers Complainant on the other hand, owing to the same dissimilarity, thought it would be sufficient to confine their investigations to a single type. They selected the Hiogo and Osaka Settlements as such type, and gave the following (Mémoire, p. 24) as the reason for the choice:

> Parmi les Actes ouvrant aux étrangers les concessions, les Arrangements relatifs aux communes de Kobé

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> et d'Osaka sont les plus explicites, car leurs rédacteurs ont utilisé, pour les élaborer, l'expérience déjà acquise dans les concessions de Yokohama et de Nagasaki. Il semble donc que le régime de ces deux concessions peut être pris comme base d'une étude sur les conditions régissant les étrangers au Japon avant les Traités de 1894 et 1896.

The Hiogo and Osaka Settlements, as has already been pointed out,[1] were not fairly representative of any other of the Settlements. They were the only foreign Quarters in respect of which Japanese municipal administration was not complete and exclusive, when the old Treaties expired, and they contained only about 10 per centum of the land embraced in the several Settlements.

But, aside from these considerations which are alone sufficient to exclude the use of the Hiogo and Osaka Settlements as the base for general investigation, the reasons assigned by the Powers Complainant for selecting those Settlements, would, if given their natural and logical extension, compel the substitution of the Tokio Settlement in place of those at Hiogo and Osaka.

The Settlement at Tokio was established nearly two years after those at Hiogo and Osaka. If the experience of eight years at Yokohama and Nagasaki was utilized in the elaboration of the Hiogo and Osaka system, then the two years' additional experience at the two former places and the two years' observation of the Hiogo and Osaka experiment must have exercised a powerful influence in the organization of the Tokio Settlement.

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1. See *supra*, p. 16.

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Regarding the despatch from the French Minister in Japan of September 8, 1868,[1] which forms the next subject of discussion in the Mémoire (pp. 24–25), it is only necessary to remark that it proves, it seems to the Japanese Government, that the Treaty Powers instead of attempting in 1868 to establish a system of perpetual leases which would be outside the domain of Japanese law, endeavoured to make the system conform to the legal conceptions then existing in Japan. The despatch also makes it abundantly clear that the leases in question were intended to be exclusively leases of land. The right of foreigners to own buildings, it must be borne in mind in examining the despatch, already existed in virtue of the Treaties then in force.

On the subject of the fiscal obligations resting upon the Japanese Government in connection with the administration and up-keep of the Hiogo and Osaka Settlements, the Mémoire at page 25 contains the following remarks:

> La Convention du 7 août 1868 (annexe, p. 91) détermine les terrains qui feront partie de la concession, fixe leur mise à prix et le montant de la rente annuelle que les concessionnaires auront à payer et énumère les charges incombant en retour au Gouvernement Japonais.
>
> * * * *
>
> Les différentes charges dont le lot était grevé, ainsi détaillées, le Gouvernement Japonais se trouvait en principe tenu des services publics y correspondant.
>
> * * * *

1. The statement contained in the despatch referred to, to the effect that the ownership of land belonged exclusively to the Emperor, is erroneous. See *infra*, p. 79.

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> L'ensemble des charges réciproques qui pèsent sur le Gouvernement Japonais et les concessionnaires se trouve ainsi complètement déterminé, hormis un cas exceptionnel prévu par l'article VIII de l'Arrangement.

These statements, so far as they suggest that the Japanese Government assumed any liability in respect of the ordinary municipal expenditure of the two Settlements in question, are in direct contradiction to the plain meaning of the plain words used in the Arrangement to which they relate.

Article V of that Arrangement provided that the ground-rent in respect of the Hiogo and Osaka Settlements, subject to a small charge for the ordinary land-tax then leviable, was to be paid into the municipal fund of each place to be appropriated to the repair of roads and drains, lighting the streets, or other municipal purposes.

Article VI of the same Arrangement read as follows:

> In consideration of the formation of the municipal fund at each Settlement as aforesaid, the Japanese Government will not be held responsible for the construction or repair of roads, drains, lighting the streets, or other municipal expenses, except in the event of serious damage being occasioned by extraordinary action of the elements. In such case, the share to be borne by the Japanese Government in making good such damage shall be determined by mutual agreement.

It was further agreed in Article IX of the Arrangement that the Japanese Government were to keep the sea and river walls, parapets and landing places (which are in fact outside the confines of the late Settlements) in good order at their own expense.

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In the presence of these engagements it is difficult to understand how it can be said, on the one hand, that the Arrangement of 1868 enumerates the charges incumbent on the Japanese Government in return for the ground-rent which did not pass into their hands, or on the other, that the Japanese Government were in principle bound to perform the public services corresponding to the charges with which the land was burdened.

The Japanese Government in considering in their Case (p. 55) the Hiogo and Osaka Arrangements of 1867 and 1868, drew the conclusion —

> That, regardless of the question of the sufficiency or insufficiency of the revenue of the Settlements, the Japanese Government were to be wholly relieved of responsibility for the ordinary up-keep and administration of the Settlements; and that it was for the Settlements alone to see that their revenue was equal to their expenditure, or that their expenditure did not exceed their revenue.

The Japanese Government find no reason at this time to reconsider or revise those conclusions.

The next point in this Chapter of the Mémoire which invites comment, is the suggestion that, in addition to the market value of the land, the price paid for the Hiogo and Osaka Settlement lots and the annual ground-rent reserved in respect of those lots, represented —

> 1. Le remboursement des dépenses effectuées par le Gouvernement Japonais, pour préparer le susdit emplacement comme terrain à bâtir pour les étrangers (art. III).

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2. L'impôt foncier ordinaire dû au Gouvernement Japonais par ledit terrain (art. V).

3. Sa quote-part des charges correspondantes aux dépenses municipales necessitées par la construction et l'entretien des voies et des égouts, l'éclairage des rues ou autres usages municipaux (art. III, art. V).

The idea that the amount realized from the sale of the lots in question represented, in any measure or to any extent, the market value of or compensation for the land, is shown in the Case of Japan (pp. 57–61 and 67) to be wholly fallacious.

The total amount received by the Japanese Government from such sale was *yen* 261,407.70 (*francs* 675,302.35), while the known expenditure of the State in preparing the settlement sites for the residence of foreigners was *yen* 304,526.80 (*francs* 786,693.22). The balance of the purchase money, *yen* 134,222.96 (*francs* 346,742.20), was turned over to the municipal funds of the two Settlements for appropriation to meet ordinary municipal expenses.

The Japanese Government admit that the ground-rent payable in respect of the land in the late Hiogo and Osaka Settlements, represented when those Settlements were organized —

1st. The ordinary land-taxes payable at that time to the Japanese Government in respect of the land forming those Settlements, and

2nd. The share then chargeable upon the settlement land for the maintenance or up-keep of those Settlements.

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Although the rent is only a fraction of the amount which the land in question would now be called upon to pay as Imperial and Local taxes if it were subject to ordinary taxation, nevertheless that rent continues to represent to-day precisely what it represented in 1868.

The settlement land held under governmental leases in perpetuity is still entitled to complete exemption from taxation of all kinds. To this condition of things the Japanese Government can offer no valid objections. It is so provided in the Revised Treaties and recognized by the laws of the Empire. But what they do object to is the claim that the settlement ground-rent represents at this time more than it did during the existence of the Treaties of 1858–1869, or in other words, that in respect of property other than that for which the rent is paid, such rent carries with it as an absolute right an immunity from taxation, which was formerly enjoyed solely as an incident of consular jurisdiction and which, as such, was wholly abolished by the new Treaties.

In a foot-note to page 25 of the Mémoire, it is stated:

> Lorsque les terrains furent concédés il n'existait aucune charge sur les immeubles, si ce n'est l'impôt foncier.

The statement does not appear to have an important bearing on the point at issue, as the introduction of the present system of house-taxes preceded by seventeen years the operation of the Revised Treaties. Nevertheless it is interesting to refer, in contradiction of that statement, to the following remarks on the subject of the house-taxes contained in the

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report from the British Legation at Tokio on Taxation in Japan, to which reference was made in the Case of Japan (p. 99):

> This tax is imposed on owners of houses. The tax itself is not new, dating back to the times of the Tokugawa Shogunate, when it was known to rate-payers under the name of "Kikigoma." [1]

Respecting the tenure of land in Japan the Mémoire at page 26 declares:

> Les coutumes Japonaises ne reconnaissaient au particulier ni le droit de propriété sur la terre, ni même celui de conclure avec le propriétaire un bail lui assurant sur le fonds concédé un droit réel de jouissance perpétuelle ou de longue durée.

This assertion is also incorrect. The right of private property in land, both in the form of actual ownership and leases for long terms and in perpetuity did exist before as well as at the time the foreign Settlements were created.

On the subject of the private ownership of land the Japanese Government, in support of their statement, invite attention to a report respecting Land Tenure, [2] which appears as a Supplement to the report from the British Legation at Tokio on Taxation in Japan. It may be added, that if such right of private ownership of land had not been recognized, it is not likely that the Japanese Government would have paid in 1889, as they did, the sum of *yen* 572,819.83 (*francs* 1,479,782.66) as compensation for private rights in land at

1. British Parliamentary Paper, "Japan, No. 1 (1884) Trade Reports," p. 63.
2. Ibid., pp. 90–96.

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Nagasaki, which were in existence when the Settlement was formed. (Case, pp. 48–50.)

Touching the question of the right of long leases and leases in perpetuity, it may be remarked that the statement of the Party Complainant on the subject seems to be irreconcilable with the assertions contained in the despatch from the French Minister of September 8, 1868, which are quoted with approval on pages 24 and 25 of the Mémoire and which have already been referred to herein.[1] According to those assertions it was in order to conform to the laws of Japan that the sale of settlement land to foreigners was given the form of emphyteutic leases, which conferred on the purchasers the right of perpetual enjoyment of the land. To deny that the right of perpetual leases existed when the Settlements were established, except in virtue of conventional engagements, is to impeach the validity of the governmental leases in perpetuity of extra-settlement land at Hiogo, since no engagement of an international character has ever existed authorizing such leases. So in Yokohama leases in perpetuity were issued in 1861, while the first Arrangement relative to the Settlement was concluded in 1864.

The misapprehensions of the Powers Complainant on the subject of land tenure in Japan, were largely due no doubt to the fact that, independently of treaty stipulations, foreigners possessed no rights in respect either of land or buildings. By the Treaties of 1858–1869 the subjects and citizens of the Treaty Powers were granted the right to lease land and own buildings. The rights thus secured were, so

1. See *supra*, p. 74.

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far as not regulated by special international arrangements, exercisable in accordance with the laws of Japan.

The special Arrangements relative to the several foreign Settlements, which were concluded between Japan and the Powers and were subsidiary to the Treaties of 1858–1869, had for their object the definition of settlement areas; the establishment of rules governing the allotment of the settlement land; the fixation of an uniform rate of ground-rent; the adoption of a form of lease for each Settlement, and the making of provisions for the up-keep and, in some cases for the partial control or administration, of the settlement zones. They did not in any instance attempt to determine the rights and interests of parties in the leased land, or to regulate the enjoyment of those rights and interests. They naturally contained no provisions relating to the buildings to be erected on the leased land, since buildings were to be the absolute property of the land-renters and formed no part of the property leased.

Those subsidiary Arrangements were one and all expressly abrogated by the new Treaties, and the Settlements were also completely merged in the Japanese Communes and the up-keep and administration of those quarters was wholly assumed by the competent Japanese Authorities. The leases issued in pursuance of those Arrangements continue in force subject to the rent and other conditions contained in the leases. They stand upon the footing of treaty engagements, since they were granted in pursuance of international Arrangements and have been confirmed by the new Treaties. Those leases, no doubt, constitute an exception to the general system of land

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tenure in Japan as it exists to-day under the Civil Code of the Empire (Case, pp. 85–86), but like other treaty grants they form a part of the law of the land and are enforcible as such. So far, therefore, as they profess to define and regulate rights relating to the leased property, they are the law; but where they are silent, the general laws of the Empire are applicable; and the same rule prevailed during the existence of the Treaties of 1858–1869.

Neither in the subsidiary Arrangements which have been abrogated, nor in the leases in perpetuity which are continued in force, can the Japanese Government find any indication of an intention on the part of the Treaty Powers to replace, in respect of the leased property, the laws of Japan by any other system of laws.

So far as the property held under the leases in perpetuity is concerned, the Japanese Government act in the dual capacity of sovereign and proprietor, because the leased land is situated in Japan and is the property of the State. But in respect of the buildings standing on the leased land, the Japanese Government act solely in the capacity of sovereign, because those buildings are private property and do not belong to the State.

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CHAPTER II.

Chapter II, Part II of the Mémoire is entitled:

> Analyse des obligations contenues dans les contrats passés entre le Gouvernement Japonais et les étrangers, en exécution des Traités et des Arrangements qui ouvrent les Concessions à ces derniers.

It is nevertheless exclusively devoted to the consideration, not of the leases in perpetuity, but of the Arrangements under which the Settlements were established and in pursuance of which the leases in perpetuity were granted.

The reasons which led the Japanese Government to conclude that it would be useless for them to follow the Powers Complainant in their study of the subsidiary Arrangements relative to the Settlements of Hiogo and Osaka,[1] have also convinced them that it is unnecessary for them in the present instance to follow those Powers in their analysis of the various Arrangements relative to the several Settlements. The statements and deductions made in connection with that analysis will, however, call for attention.

This Chapter of the Mémoire is divided into two Sections, which are in turn divided into two Paragraphs each.

Section A relates to the essential obligations to which foreigners are bound *vis-à-vis* the Japanese Government, and the heading of the first Paragraph of this Section reads as follows:

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1. See *supra*, p. 71.

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I. Le payement d'une somme fixe et d'une rente annuelle qui, totalisées, représentent le prix de vente du terrain qui leur est adjugé, libre de certaines charges, par le Gouvernement Japonais.

The Japanese Government are compelled to take exception to the observations contained in the Mémoire under the above title. They deny that the payment of a fixed sum and an annual rent, taken together, represented the sale price of the settlement land, free of certain charges.

At Nagasaki the whole of the settlement land in respect of which leases in perpetuity were granted, amounting when the new Treaties took effect to *tsubo* 105,041.81 (square metres 347,246), was allotted freely and without the payment of any purchase money whatever. At Yokohama, out of a total of *tsubo* 129,063.70 (square metres 426,656.84) of land in respect of which leases in perpetuity existed at the time the Revised Treaties came into force, *tsubo* 104,179.70 (square metres 344,395.69) were allotted in the same manner as at Nagasaki. Thus out of the *tsubo* 511,150.89 (square metres 1,689,754.94) of land comprising the late Settlements including the Yokohama Bluff, *tsubo* 209,221.51 (square metres 691,641.43) or more than 40 per centum was granted freely and without the payment of any purchase money.

In respect of the remaining *tsubo* 301,929.38 (square metres 998,113.62) of settlement land, the leases in perpetuity of which were disposed of by public auction, the Japanese Government realized from the sale the sum of *yen* 769,274.45 (*francs* 1,987,289.76). The known expenditure of the Japanese Government, on the other hand, in preparing the sites

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of the several Settlements as places of residence for foreigners, amounted to *yen* 999,404.97 (*francs* 2,581,792.84), or *yen* 230,130.52 (*francs* 594,503.08) more than the total sum received by them as the proceeds of the sale of the settlement leases as above. (Case, p. 67.)

Consequently, the amount received by the Japanese Government from the sale of settlement leases in perpetuity, instead of representing in any sense or to any extent the purchase price of the land, only served to partially reimburse the known outlay of the Japanese Government in the preparation of the settlement sites.

The contention that the money so received was intended as compensation for the land is, moreover, inconsistent with the provisions of the subsidiary Arrangements relative to the Settlements. (Appendix, pp. 189–190 Articles IV and X; pp. 208–209 Article VI; and p. 212 Article III.)

Equally the Japanese Government are unable to discover any basis for the suggestion that the settlement ground-rent was intended to represent in part the sale price of the settlement land.

That the Yokohama and Nagasaki settlement ground-rent was intended to serve solely as rent and taxes, is proved by the correspondence and other documents appearing at pages 309–323, 360–368 and 371–383 of the Appendix to the Case of Japan. That as early as 1871 the Yokohama ground-rent had ceased to be sufficient to meet even the expenditure for the up-keep of the Settlement, is shown by the Note from the Governor of Kanagawa to the Senior Consul at Yokohama dated December 15, 1871. (Appendix, pp. 350–351.)

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So far as the Hiogo and Osaka Settlements were concerned, Article V of the Arrangement of 1868 (Appendix, p. 212) establishes the fact that the ground-rent represented nothing more than the Imperial land-taxes at the time and the estimated cost of maintenance of the Settlements. That the Hiogo ground-rent was wholly insufficient to meet the expenses chargeable against it, is shown by the Minutes of the proceedings of the Municipal Council. [1]

As regards the Settlement at Tokio, Article V of the Arrangement of 1870 (Appendix, p. 234) points to the conclusion that the ground-rent was to be appropriated to meet the cost of up-keep of the Settlement.

The Powers Complainant, continuing to employ the Hiogo Settlement as a type, declare that the sale price of the land was of the highest and that the rent was five to six times as high as the rent paid by Japanese for building land in the immediate neighbourhood of the Settlement. They point out that the Settlement was not contiguous to the city of Hiogo but close to the village of Kobe and that, although in consequence of the industry and efforts of Europeans Kobe subsequently became a real town, the settlement site was in 1868 a marshy beach of no value, and even after the work of embankment had been executed by the Japanese Government, it was still only a plain of sand transversed by roads barely laid out. (Mémoire, p. 27.) They support the contentions above summarized, which relate exclusively to the sale price and rate of rent for the Hiogo Settlement in 1868, by referring in the first place to the protest made by the

1. See Appendix, pp. 42–48.

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French lessees to the French Vice-Consul at Yokohama against the rate of rent adopted in 1861 in respect of the Yokohama Settlement, and by giving in the next place the market price and the rental value of agricultural land in the vicinity of the Hiogo Settlement in 1868. And they conclude the Paragraph as follows:

> Tous les renseignements qui ont pu être recueillis sur la valeur des terrains au moment où les concessions ont été ouvertes aux étrangers s'accordent pour faire regarder ces prix comme absolument excessifs et, sans entrer dès à présent dans la discussion, il convient cependant de remarquer en passant qu'ils s'expliquent seulement si l'on admet qu'ils représentaient outre la valeur de la terre, le rachat de toutes les charges dont elle pouvait être grevée; si l'on reconnaît que la rente foncière équivaut aux impôts, non sur le seul terrain nu, mais sur le terrain bâti.

The Japanese Government will reply to the foregoing statements of the Powers Complainant in the order in which they are summarized.

The leases of the land in the Hiogo Settlement, the sale price and rent of which is declared to have been excessive, were sold by public auction. The first sale took place in September 1868, when the leases of nearly *tsubo* 15,000 of land were disposed of. The second sale was in June 1869 and the leases of nearly *tsubo* 7,500 were then sold. The leases of the balance of the settlement land were subsequently disposed of according to the demand. The upset price was fixed at *bu* 8 per *tsubo*, the outlay of the Japanese Government in preparing the site as a residential quarter for foreigners being taken as the basis for calculating such price. (Appen-

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dix, pp. 208 and 212.) The subjects and citizens of the Treaty Powers were alone permitted to bid for the leases. (Appendix, p. 215.) Five months before the first auction sale took place, foreigners had been granted the privilege of freely leasing land and purchasing buildings from Japanese and of erecting their own buildings, within a delimitated area adjoining and many times as large as the settlement site. (Appendix, p. 217.) That privilege was extensively availed of. (Case, pp. 145–155.)

These were the conditions prevailing when the leases of the settlement land were sold:—a limited number of persons having the right to purchase, on the one hand, and a practically unlimited quantity of available extra-settlement land, on the other.

The settlement leases realized on sale the sum of *bu* 486,587.73[1] equivalent to *yen* 308,739.91, of which the Japanese Government received *yen* 205,356,23, that is to say: *yen* 47,631.61 less than the known amount of their disbursements in laying out and preparing the settlement site. How in the presence of such circumstances it can be claimed that the sale prices of the leases in question were excessive, is not understood by the Japanese Government.

They are equally unable to find in the statements of the Powers Complainant any good grounds for the contention, that the settlement rent was five to six times higher than the rent for neighbouring extra-settlement land. If such a disparity had existed, it would have reacted in the first place on the sale price of the settlement leases, and in the next

1. Not *bu* 514,086, as stated on page 27 of the Mémoire.

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place it would have caused the foreigners interested to lease land in the Mixed Residence Quarter rather than in the Settlement.

But the Japanese Government firmly believe that the synopses of the extra-settlement governmental and private land leases given in their Case at pages 148–149 and 154, establish the fact that the rate of settlement ground-rent was, when adopted, extremely moderate.

The Japanese Government frankly concede that the enterprise and industry of foreigners were largely instrumental in transforming Kobe into a thriving city, but they do not think that that fact can give rise to a valid claim to immunity from taxation.

It is no doubt true that the settlement site when selected was a marshy beach which, in its unimproved condition, was of but small value. But a glance at Map No. 7 of the Appendix will show that the location is one of the best on the harbour of Kobe, and the money expended by the Japanese Government in raising, embanking, draining and laying out the site made it available as a favourite residential and business quarter.

Nor can the Japanese Government for a moment admit that their conclusions are in the least weakened by the references made by the Powers Complainant in support of their contentions.

The protest lodged by French citizens with their Consul in 1861 against the rate of ground-rent adopted in respect of the Yokohama Settlement, can hardly be said to have any direct bearing on the question of the proper rate of

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rent for the Settlement at Kobe in 1868. No less irrelevant is the reference to the value of agricultural land in the vicinity of Kobe. Absolutely no relation exists, and consequently no comparison is possible between land held for cultivation and land set apart for building purposes. Again, none of the pieces of land held under leases registered in the French Consulate at Kobe, to which the Powers Complainant invite attention, can be compared with the settlement land.

One of those lots is in Fukiai Ward to the south of the Settlement and near the Foreign Cemetery, while the other two are situated in the rear and to the east of the Settlement. (Appendix, Map No. 7.) All three of the lots are private property and subject to the usual land taxes and rates. The following Table respecting those three lots will, when compared with the Tables on pages 127 and 154 of the Case of Japan, give a pretty fair idea of the difference in value between those pieces of ground and the settlement land:

Description of the Lots	Land.				
	Taxable value per 100 *tsubo*.	Taxes and rates per 100 *tsubo* for the 34th fiscal year.			
		Imperial.	Municipal.	Ward.	Total.
	yen	yen	yen	yen	yen
No. 3, Fukiai Hamabe-dōri Roku-chōmé	26 200	655	590	033	1 278
No. 61, Sannomiya-machi Itchōmé	169 000	4 225	3 808	211	8 239
No. 19, Sannomiya-machi Nichōmé	234 000	5 850	5 265	293	11 408

Having regard to the location and actual value of the above lots it can not be said that the rates of rent payable in

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respect of the land, as given in the note on page 28 of the Mémoire, are comparatively speaking any lower than the rates of rent mentioned in the Table on page 154 of the Case of Japan.

It may be mentioned that in the above Table as in the Table on page 127, the surtax on land is excluded.

Finally appealing in full extension to the argument which the Powers Complainant partially invoked in the selection of the Hiogo and Osaka Settlements as the type for the study of the condition of foreign residential Quarters under the old Treaties, the Japanese Government would point out that the Settlements were established in the following order: Yokohama, Nagasaki, Hiogo, Osaka and Tokio.

In respect of the original Yokohama Settlement it was agreed in 1860–1861, that the land was to be allotted freely and without the payment of any purchase money, but subject to an annual rent of *sen* 27.97428 per *tsubo*.

As regards the Settlement at Nagasaki it was arranged in 1860 (Appendix, pp. 196–202), that the land was to be allotted freely and without the payment of any purchase money as in the case of Yokohama. The rent was at the following rates for the settlement land:

Front	lots	*sen*	37	per	*tsubo*
Rear	„	„	28	„	„

In 1864 and 1866 (Appendix, pp. 181–193), it was agreed that the leases of land in the Yokohama Settlement Extension should be sold at public auction and that the proceeds of such sales should be retained by the Japanese Government in consideration of the expenses incurred by them in raising,

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laying out, draining and improving the Quarter.

In 1868 the final Arrangement relative to the Hiogo and Osaka Settlements was concluded. (Appendix, pp. 211–216.) It was therein provided that the leases of land in the two Settlements should be disposed of at public auction, subject to an upset price of *bu* 8 (*yen* 2.572) per *tsubo*. The Japanese Government were to retain a portion of the proceeds of sale, in reimbursement of the money expended by them in preparing the two sites. The land thus sold was made subject to ground-rent at the rate of *bu* 1 (*sen* 32.154) per *tsubo*.

In 1870 the Tokio Settlement was formed. (Appendix, pp. 233–235.) The leases of the settlement land were to be sold at public auction subject to an upset price, in some cases of *bu* 6 (*yen* 1.929), and in others of *bu* 8 (*yen* 2.572) per *tsubo*. The annual rent was fixed at *bu* 1½ (*sen* 48.23) per *tsubo*.

If it can be said that the Arrangement of 1868 respecting the Hiogo and Osaka Settlements represented the eight years' experience previously acquired at Yokohama and Nagasaki, then the progressive increase in the rates of ground-rent and the adoption of more onerous conditions in connection with the acquisition of leases as each new Settlement was established indicates, it may be claimed with still greater reason, that experience had demonstrated that the earlier rates of rent and other conditions of tenure were insufficient and inequitable from the point of view of the Japanese Government.

Considering that the leases of more than 40 per centum of the settlement land were granted freely and that the total amount received by the Japanese Government from the sale of the balance of the leases was 23 per centum short of their

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known outlay in preparing the settlement sites, exclusive of the compensation granted to private owners of settlement land (Case, pp. 34 and 48–50);[1] considering also that the rent reserved in respect of the settlement land is 30 per centum short of the estimated land-taxes (Case, p. 144), and that such rent is not and has never been sufficient to discharge the Imperial land-taxes and to meet the cost of up-keep of the settlement areas; considering further that the settlement Arrangements and leases clearly indicate that the rent in question was intended to be purely a charge on the leased land, and considering finally that foreigners actually enjoyed under the regime of consular jurisdiction immunity not only from house-taxes but generally from all taxes; the Japanese Government are at a loss to understand how it can be contended, as the Powers Complainant do contend, that the sale price and rent of the settlement land were intended to represent the value of the leased land and the redemption of all charges with which the land could be burdened not only as unimproved land but as land built upon.[2]

In the second Paragraph of Section A which deals with—

> II. L'exécution de certaines prescriptions imposées, parfois à peine de déchéance, par le Gouvernement Japonais—

1. See *supra*, pp. 84–85.

2. Since the rates of land-taxes in Japan are not and, so far as the Japanese Government are aware, have never been affected by the buildings placed on the land, it must be assumed that in using the expression, "non sur le seul terrain nu, mais le terrain "bâti," the Powers Complainant would wish to be understood as claiming that the sale price and rent in question was intended to include not only all land-taxes but all imposts in respect of the buildings erected on the leased land. It may, however, be remarked that it is claimed elsewhere in the Mémoire (pp. 37 and 41), that the ground-rent includes not only taxes on land and buildings but all municipal taxes.

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there is but little calling for special consideration.

The Paragraph begins as follows:

> Parmi ces prescriptions, il en est une qui se lie à la question soumise à l'arbitrage, c'est l'obligation souvent imposée au preneur étranger d'affecter le terrain qui lui a été concédé à un usage déterminé.
>
> Les Traités ouvrant les villes et les ports Japonais aux étrangers prévoient la construction de bâtiments sur les terrains qui leur seraient donnés en concession, et reconnaissent sur ce point certains droits à l'Autorité Japonaise.

On page 29 of the Mémoire the following statement bearing on the same subject, appears:

> Les Actes d'ouverture des différentes concessions indiquent de même que c'est en vue de construire des maisons que les terrains ont été concédés.

The foregoing observations are scarcely reconcilable with the following assertion appearing on page 19 of the Mémoire:

> Le droit de superficie qui leur était reconnu est en effet défini par l'article 265 du Code civil Japonais, de la manière suivante: "Est superficiaire celui qui a le "droit de se servir du terrain d'autrui pour y posséder "des maisons, des arbres ou des bambous." Les baux perpétuels ne connaissent point de semblables restrictions, ils concèdent des droits de propriété et non pas un usage du terrain pour des buts restreints, ils sont, pardessus tout, en dehors du régime des lois Japonaises.

But the Japanese Government do not attach serious importance to the contradiction, since they are unable to discover why buildings standing on land leased specifically for building purposes should be less liable to taxation than buildings standing on land leased for general purposes. The position of the

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Japanese Government on this phase of the question has already been sufficiently explained to make any additional remarks on the subject unnecessary. (Case, pp. 20–23 and Appendix, pp. 154–155.)

The suggestion on page 29 of the Mémoire that land was granted in certain cases at Yokohama either free of rent or at reduced rates because the land was to bear no buildings, is, it seems to the Japanese Government, based upon a misapprehension of cause and effect.

It is true that in several instances special leases of land were granted upon terms more favourable than those that appertained to the ordinary leases. In some cases the leases were granted without the payment of purchase money, and in others there was a remission or reduction of rent. But in every case the fact that the land was granted for some public purpose deserving of special consideration was the sole reason for the special favour shown, and the grant was invariably made subject to the condition that the land was not to be used for any other purpose than that for which it was granted, and in cases where the special grants were for purposes not requiring the use of buildings, such grants were subject to the further condition that no buildings were to be erected on the granted land. (Appendix, p. 191 Article XI.)

Thus, Bluff Lot No. 82 B (Mémoire, p. 148) was exceptionally granted for the purposes of a General Hospital, without the payment of any purchase money and at the reduced rate of rent of *yen* 10 per *tsubo* 100.[1] Thus also a

1. In the copy of the lease appearing on pages 148–149 of the Mémoire, the words "Yen Dollars" are used in error for the words "Ten Dollars." A similar mistake is made in the French version of the lease appearing at page 138 of the Mémoire.

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lot of land (Mémoire, p. 146) forming part of the ground appropriated for public buildings (Appendix, p. 189 Article IV), was granted for the use of a German Club without the payment of any purchase money. In both cases the leases contained the provision that the land was only to be used for the purposes for which it was granted.

The land for the Bluff Public Garden (Mémoire, p. 149) was granted without the payment of any purchase money and at the reduced rate of rent of *yen* 6 per *tsubo* 100. The grant was subject to the condition that the land was not to be used for any other purposes than those of a public garden and that no buildings were to be erected on the land excepting such as legitimately appertained to a public garden.

In none of these cases can the Japanese Government discover any grounds for the suggestion that the non-erection of buildings served as an inducement for the reduction in the rate of rent. The case of the General Hospital on the contrary directly contradicts that suggestion.

It may be recalled in this connection that no Arrangement relative to Yokohama, to which the Japanese Government were a party (Case, pp. 21–22), contained a building condition such as appears in Article II of the Nagasaki Land Regulations. (Appendix, p. 196.)

Section B of the Chapter now under examination, has reference to the obligations of the Japanese Government *vis-à-vis* the lessees in perpetuity of government land. The heading of the first Paragraph of the Section reads:

I. A livrer le terrain aux concessionnaires et à leur

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en assurer la jouissance perpétuelle libre de toute charge foncière ou immobilière.

The Japanese Government admit that they are bound to insure to such lessees the perpetual enjoyment of the land leased to them, free of all charges, saving only the ground-rent and such charges and taxes as are contemplated by the leases; but they deny that that obligation extends to any property other than the property specifically granted by the leases and in respect of which the ground-rent is paid.

The Powers Complainant concede that the Revised Treaties do not expressly exempt buildings standing on land held under governmental leases in perpetuity from taxation. (Mémoire, p. 38 note (3) and p. 39.) But starting in this Paragraph with the assertion, that the obligations resting upon the Japanese Government as proprietor of the leased land in question extend to immovables other than such land, they reached the conclusion that the immunity from taxation existing in favour of the land was shared also by the privately owned buildings standing on such land.

The assertion is, in the judgment of the Japanese Government, inaccurate and the conclusion based upon it is, they believe, equally erroneous. The immunity of the lessees of the land from fiscal burdens in respect of their holdings exists because they are lessees and not owners of the land. The liability of the owners of the buildings standing on the leased land to pay taxes, on the other hand, arises from the fact that they are owners and not lessees of the buildings.

The second Paragraph of Section B is headed—

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II. A assumer les services publics au profit des terrains concédés.

In order to indicate the public services, which it is alleged the Japanese Government have assumed in respect of the late Settlements, the Powers Complainant quote extensively from the subsidiary Arrangements relative to those Settlements. They assert that the public services thus assumed by the Japanese Government, were in return for the ground-rent,[1] and they draw the conclusion that such rent represents *en bloc* all that is due from the lessees for such services.

The analyses of the former subsidiary Arrangements, which are given by the Japanese Government in Part II of their Case, show the public services to which the settlement ground-rent was, during the existence of those Arrangements, in some instances, assigned. The rent was not, under the old Arrangements, and is not under present conditions, sufficient to meet the services named,[2] while the outlay for those services represented and still represent only a fraction of the total cost of government in its different departments. Towards that total, foreigners equally with Japanese subjects are now under obligation to make due contribution. The settlement ground-rent falls considerably short of the land-taxes that would be leviable on the land, if taxes were substituted in place of rent. Such rent, however, covers all imposts, Imperial as well as Municipal, with which it is possible under the existing leases to burden the land. To the extent of the difference between rent

1. The Kobe Hill Lots Arrangement contains nothing to show that any public services were assumed in return for the commuted ground-rent.

2. The Mémoire (pp. 32–33) states that —

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and taxes, therefore, the lessees of settlement land actually enjoy at this time an advantage over owners of land. It is admitted that if, as was contemplated in 1887, actual ownership of settlement land were granted in place of the present leases, and land-taxes were substituted in place of the existing ground-rent, then the settlement buildings would be liable to house-taxes.

In these circumstances and in the absence of any express engagement to that effect, the Japanese Government are unable to understand why the differentiation already enjoyed by the settlement lessees in the matter of the fiscal burdens on land, should be increased by exemption from house-taxes. Certainly, reference to repealed Arrangements by which a partial assignment of ground-rent was in some cases made to meet public services, which were never very clearly defined and the cost of which exceeded the amount of the rent assignable, furnishes no adequate explanation.

Le Conseil municipal de Kobé fonctionna pendant les trente ans que dura l'organisation européenne de la concession. Son budget annuel se composait du montant des rentes annuelles de 1 bou par *tsubo*, déduction faite de l'impôt foncier versé au Gouvernement Japonais et du montant de la taxe de police. Il convient de remarquer à ce propos que, quoique les dépenses de la Municipalité aient parfois été très fortes, jamais elle n'a pu lever d'impôts additionnels.

In "Note Préliminaire" which appears in Annexes III to the Mémoire by way of general remarks regarding the Arrangements relating to the establishment of Settlements in Hiogo and Osaka, it is further stated that —

"Les arrangements pour le quartier étranger de Hiogo furent observés et fonctionnèrent d'une manière très satisfaisante jusqu'à leur suppression par les nouveaux traités. Les rentes foncières étaient plus que suffisantes pour payer les dépenses d'une administration municipale assez généreuse, et quand les nouveaux traités furent mis en vigueur, des fonds municipaux considérables furent transmis aux Autorités Japonaises. (Mémoire, p. 89.)

In rebuttal of these statements it is only necessary to refer to the Minutes of the proceedings of the Municipal Council, of which some extracts are presented in the Appendix to the Counter-Case of Japan. (See Appendix, pp. 42–48.)

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PART IV.

IN REPLY TO PART III OF THE MÉMOIRE OF THE POWERS COMPLAINANT.

Part III of the Mémoire deals with the conditions resulting from the enforcement of the Treaties of 1894–1896, and is divided into two Sections entitled respectively "Discussions des Prétentions du Gouvernement Japonais" and "Arguments d'Equité."

In the first Section it is at the outset pointed out that the Revised Treaties had the effect of again bringing the condition of foreigners within the purview of the "droit commun," while maintaining in favour of such foreigners certain exceptional rights which had been guaranteed to them by contracts. It is next announced that having in view the fact that the most favoured nation clause appears in the new Treaties, it is sufficient to take the Franco-Japanese Treaty for study in the present controversy, since it is the most explicit and precise of any of the Treaties involved in this Arbitration.

The Japanese Government have already expressed the conviction that the settlement clauses in the Treaties with the Powers Complainant all have, as they were intended to have, a common meaning and they also at the same time pointed out the reasons why in their opinion the most favoured nation clause could not be invoked for the purpose of enabling the

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Powers Complainant to base their claims in the present Reference on any one of those settlement clauses to the exclusion of the others. (Case, pp. 94–95.)

The Japanese Government find no reason for modifying the views then advanced, but it seems to them proper to remark that the contention of the Powers Complainant at this point appears to be, not that the Revised Treaties exempt the buildings in question from taxation, but that such Treaties maintain pre-existing rights.[1]

The Mémoire, after quoting the text of Article XXI of the Treaty of 1896 between Japan and France, thus proceeds:

> Ainsi, l'article XXI du Traité Franco-Japonais supprime le régime municipal privilégié dont jouissaient les quartiers étrangers. Rien, au contraire, de ce qui touche les droits privés des étrangers et leurs biens n'est modifié par le Traité. Ils possèdent les mêmes immeubles en vertu des mêmes contrats que précédemment et les obligations que ces contrats imposaient aux parties restent les mêmes.
>
> Le Traité stipule que les baux à perpétuité sont maintenus; en conséquence, la rente continue à être due par les concessionnaires étrangers dans les mêmes conditions qu'autrefois et à représenter l'ensemble de leurs obligations.

It is true that the settlement clauses of the new Treaties suppressed the privileged municipal regime enjoyed by some of the Settlements, but those Treaties in other clauses did more,—they suppressed consular jurisdiction and all the exceptional privileges, immunities and exemptions that existed as a part of such jurisdiction.

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1. See *supra*, p. 10.

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While the private rights and property of foreigners acquired under or in virtue of the Treaties of 1858–1869 are, so far as they are not incompatible with the new regime, still continued under the Treaties of 1894–1896, the terms and conditions of enjoyment of those rights and property have undergone fundamental changes.

Thus a foreigner engaged in commercial, industrial or banking pursuits during the existence of the ancient Treaties, prosecuted his business under the ægis of consular jurisdiction and free from taxation of all kinds, Imperial as well as Local and Municipal. But under the new order of things his business is in all respects subject to Japanese laws and jurisdiction and to Japanese taxation of every kind. Thus the subject or citizen of a Treaty Power engaged in transportation or livery business requiring the use of horses and wheeled vehicles, was also under the old regime exempt from Japanese jurisdiction and taxation. But those exemptions came to an end when the new Treaties took effect.

So in all other directions have the property, the incomes and the various enterprises and activities of foreigners in Japan become subject to the jurisdiction and revenue laws of Japan, where immunity from such jurisdiction and laws previously existed; and the Japanese Government maintain that the same general rule applies in all its parts to the foreign-owned buildings standing on settlement land held under governmental leases in perpetuity. Those buildings are admittedly subject to the jurisdiction of Japan. The new Treaties admittedly do not expressly exempt them from taxation (Mémoire, p. 38 note 3 and p. 39), and the Japanese Government can

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find no valid ground for the contention that such buildings are entitled to such exemption.

Nor does the exemption of the foreign holders of governmental leases in perpetuity of settlement land constitute in respect of the land leased by them, any exception, either in law or in fact, to the rule of the general application of the revenue laws of the Empire to foreigners. Land-taxes in Japan regardless of the dismemberments of property with which the land may be burdened or charged, are imposed on the titular owners of the land. (Case, p. 90.) Thus a superficiary in respect of his superficies, and an emphyteuta in respect of his emphyteusis, is exempt from all land-taxes. Thus the lessees in perpetuity of settlement as well as of extra-settlement land, are as they always have been, entitled to immunity from taxes in respect of their leasehold property. The Revised Treaties have crystallized and made enduring the right of exemption from taxation of lessees in perpetuity in respect of settlement land, while in respect of extra-settlement leased land that right is still dependent upon the laws of Japan, since the settlement clauses of the new Treaties are applicable only to settlement land.

The claim, therefore, that the settlement buildings in question are exempt from taxation would, if admitted, constitute the one single exception to the rule of the uniform application of the taxation laws of Japan to foreigners. It has already been shown that such an admission would constitute a departure from the principles of equal treatment. (Case, pp. 143–145.)

Accordingly, the Japanese Government *are unable to admit that the settlement ground-rent represents anything more*

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than the obligations resting upon the land-renters in respect of the land leased by them.

If it may be claimed that such rent also represents the taxes on buildings, why may it not with equal justice be claimed that it represents the imposts in respect of the business carried on in the buildings and the horses and vehicles stalled and housed on the leased land, since such business and horses and vehicles, equally with the buildings, enjoyed immunity from taxation during the existence of the Treaties of 1858–1869?

Again if the payment of such rent carries with it complete exemption from municipal taxation, why should it not in equal measure insure exemption from all Imperial taxes, since foreigners were, until the new Treaties took effect, as completely exempt from Imperial taxes as they were from municipal rates?

The Japanese Government experience some difficulty in properly dealing with the next paragraph of the Mémoire. It charges that —

> Le Gouvernement Japonais méconnaissait donc les dispositions du Traité, en se refusant, d'abord, à faire enregistrer par ses tribunaux les baux perpétuels dont le maintien était formellement stipulé; puis, en prétendant percevoir des propriétaires étrangers, installés sur l'emplacement des anciennes concessions, "d'autres "impôts, taxes, charges ou conditions que ceux expressé-"ment stipulés dans les baux en question."

The Japanese Government sincerely believe that the Powers Complainant are in error in claiming on behalf of foreigners an exceptional immunity from taxes in respect of

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certain settlement buildings, but they are well satisfied that that error springs from imperfect knowledge of local conditions and incomplete, and in some instances incorrect, information of the actual circumstances of the case. The *bona fides* of the Powers Complainant in their contentions is not to be called in question.

The Japanese Government on the other hand, do not think it necessary for them to discuss the above quoted paragraph, so far as it suggests a want of good faith on their part in the matter of the fulfillment of their treaty engagements. But the same degree of reticence is not imposed on them respecting the alleged acts upon which that suggestion rests.

It is charged in the first place that the Japanese Government refused to permit the registration of the settlement leases in perpetuity in their tribunals. The question of such registration forms no part of the point at issue in the present Arbitration;[1] nevertheless the Japanese Government feel called upon to deny that they refused in the direction indicated to permit such registration.

In view of the termination of the system of consular registration contemporaneously with the cessation of consular jurisdiction, the Japanese Government shortly before the Revised Treaties took effect, adopted the necessary measures to apply to the settlement leases in perpetuity of land and to the buildings on such land the system of registration in force generally in Japan. (Case, pp. 157–159 and Appendix, pp. 278–280.)

To meet the objections raised by some of the Treaty Powers to the system of registration as thus applied to rights of

1. See *supra*, pp. 4–5 and 11.

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property in the former Settlements, amended Regulations were promulgated in December 1899. (Case, pp. 178–180 and Appendix, pp. 281–283.) The Japanese Government then believed and still believe that the measures adopted were, in their original as well as in their amended form, complete and sufficient, and extended to the possessors of rights in the property in question full and complete protection.

The amended Regulations, however, also failed to satisfy all the Powers, and finally in September 1901 new enactments bearing upon the subject were promulgated. (Case, pp. 187–188 and Appendix, pp. 283–294.) Those enactments are now in force. All the measures above referred to had for their unique object the due protection of property rights, and the various changes made were so made, not because the Japanese Government thought that the earlier measures were defective, but in order to satisfy the Powers whose nationals were mainly concerned in seeing that those rights were fully safeguarded.

There was never, so far as the Japanese Government are aware, any question of a refusal to permit the registration of the settlement leases, and it was not until the receipt of the Mémoire now under examination that the Japanese Government learned that the system of registration in actual operation was not entirely acceptable to the Powers Complainant.

The second charge is to the effect that the Japanese Government claim to collect from the foreign proprietors installed upon sites in the former Settlements, imposts, taxes, charges or conditions other than those expressly stipulated in the leases in question.

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The stipulations contained in the settlement clause of the new Treaties which it is alleged have been disregarded by Japan, are wholly impersonal and relate exclusively to the settlement property held under leases in perpetuity. There is not, therefore, involved in the present Arbitration any question of the exemption of "propriétaires étrangers," as such, from taxation.

Not only do the Japanese Government deny that they have imposed on the property held under leases in perpetuity, as they understand that expression, any imposts or charges whatever which are excluded by the Treaties now in force, but they believe, on the contrary, that in providing for the free registration of rights respecting leases in perpetuity (Appendix, p. 283 Article III), they waived in a spirit of conciliation a tax which they had the right, strictly speaking, to impose.

In reply to the observations in the Mémoire immediately following the paragraph last above quoted, the Japanese Government wish to say that instead of admitting that the leases in perpetuity are governed by special international law, they have already denied that those leases are so governed.[1] There were, therefore, no consequences to be drawn by the Japanese Government from principles the very existence of which has never been recognized.

To the statement next made in the Mémoire to the effect that foreigners are called upon to pay taxes from which the Treaties expressly exempt them, the Japanese Government feel compelled to enter an emphatic denial.

The taxes thus referred to are, it is assumed, the house-

1. See *supra*, pp. 45–53.

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taxes, since those are the only imposts involved in the present controversy, and in respect of those taxes the Powers Complainant in effect admit that the claim to exemption rests upon implication and not upon express grant. (Mémoire, p. 38 note 3 and p. 39.)

The Mémoire continues as follows:

> Le Gouvernement Japonais n'a cependant répondu, jusqu'à présent, aux réclamations soulevées par ses prétentions chez les Représentants des Puissances, que par l'argument suivant:
>
> "Le Gouvernement Impérial n'hésite pas à reconnaître que le mot *biens* doit être pris dans un sens très large ..... Cependant le sens du mot *biens* employé dans les traités est *déterminé limitativement et clairement suivant la nature de la chose dont il est question dans le contrat.* Or, l'exception des droits étant garantie limitativement pour les biens possédés en vertu des titres de baux à perpétuité, il s'ensuit logiquement que cette garantie ne peut s'étendre à des biens autres que ceux formellement désignés par ces baux." (Note du Ministre des Affaires Etrangères Japonais, Tokio, 21 oct. 1901.)

On the 21st October, 1901, the Japanese Minister for Foreign Affairs addressed Notes to the Representatives of Germany, France and Great Britain, explaining the enactments which had been promulgated during the preceding month respecting leases in perpetuity, and indicating more fully than had previously been done the attitude of the Japanese Government on the subject of house-taxes. Those Notes were in all respects identical. (Case, p. 188.) They were written in the Japanese language, and English translations of them are given at pages 51, 98 and 146 of the Appendix to the Case of Japan.

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French versions of those Notes appear at pages 229, 257 and 285 of the Mémoire. The first two—those given at pages 229 and 257—are in all essential particulars, practically identical with the translations presented by the Japanese Government. Those renderings one and all, state very clearly the position taken by the Japanese Government and the reasons advanced by them in support of their contentions. The translation appearing at page 285 of the Mémoire, on the other hand, is in many respects wholly inaccurate. It fails to reproduce the meaning of the original, and it is in addition characterized by an obscurity from which the text is entirely free. It was from this version that the quotation above given was taken, and many of the arguments which followed that quotation are based upon the mistranslations referred to.[1]

In consecution of the paragraph last above quoted, the Mémoire next declares:

> Par conséquent, conclut le Gouvernement Japonais (Mémorandum du 2 décembre 1899 [annexes, p. 271]): "De ce que les étrangers sont affranchis, en ce qui "concerne leurs immeubles, c'est-à-dire leurs terrains "seuls, de toutes obligations autres que celles inscrites "sur les baux à perpétuité, il ne s'ensuit pas qu'ils "soient exempts des impôts relatifs à tous immeubles "qu'ils possèdent dans la concession."

To this statement the Japanese Government are in the first place compelled to say that, in their opinion, the trans-

1. In a foot-note to page 36 of the Mémoire, it is pointed out that the word "biens" appearing in the quotation above given was not employed in the Treaties, but the more precise term "propriété." The use of the word "biens" in that quotation was due to an error in translation for which the Japanese Government were not responsible. In the translations appearing at pages 230 and 258 of the Mémoire, the correct words "propriété" and "property" were respectively used.

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lation given from the Memorandum of December 2, 1899, fails to do justice to the original.

A careful re-examination of the text of the document enables the Japanese Government to declare that the translation appearing at page 74 of the Appendix to the Case of Japan is correct, and in order to facilitate a comparison of the French translation of the extract as it appears in the Mémoire with the English translation of the same extract as given in the Appendix, the two versions are here set out in parallel columns.

Translation presented by the Party Complainant.

1. De ce que les étrangers sont affranchis en ce qui concerne leurs immeubles, c'est-à-dire leurs terrains seuls, de toutes obligations autres que celles qui sont inscrites sur les titres de baux de terrains à perpétuité en vertu desquels ils possèdent ces immeubles, c'est-à-dire terrains, il ne s'ensuit pas qu'ils soient exempts des impôts relatifs à tous les immeubles qu'ils possèdent dans la concession.

Translation presented by the Japanese Government.

1. While it is contended that the word "propriétés" used in paragraph 4 of Article XXI of the Treaty between Japan and France includes buildings, the stipulation of the said paragraph respecting property refers solely to property held by foreigners under leases in perpetuity, namely land. It is an engagement not to impose on such property any burden other than the conditions prescribed in the leases themselves, but it can not be held to imply exemption from taxation of property of all kinds held by foreigners in the "foreign Settlements."

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The Japanese Government are in the next place obliged to object to the relation which the Powers Complainant have attempted to establish between the Notes and the Memorandum above referred to. The Notes were dated October 21, 1901, and the Memorandum, December 2, 1899. Looking at these dates it would be an anachronism to say that the conclusions in the Memorandum were in consequence of the observations contained in the Notes. The Notes in question were complete in themselves, and the Japanese Government drew from the propositions which they contained the conclusions which seemed to them appropriate. The same may be said respecting the Memorandum.

Accordingly, the Japanese Government must urge the Arbitral Tribunal to consult the translations which appear at pages 51, 98, 146 and 74 of the Appendix to the Case of Japan, in order to ascertain the true and exact significance of the documents in question. If that course is pursued it will be found, it is believed, that those Notes and that Memorandum were fully responsive to the claims of the Powers Complainant as those claims were then understood.

The Mémoire, after stating that in conformity with the settlement clauses of the Revised Treaties and the earlier Conventions the holders of the leases in perpetuity continue to pay the same rent as stipulated in the leases, proceeds as follows:

> Du moment que cette rente est maintenue, elle continue logiquement à correspondre aux mêmes obligations que par le passé, obligations que définissent les actes relatifs à l'ouverture et à l'arrangement des concessions. En considération du payement de la rente, les conces-

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> sionnaires étrangers ont été non seulement dispensés de tous impôts fonciers pouvant être perçus par le Gouvernement Japonais ou par des autorités locales, mais aussi de toutes taxes correspondant à des services municipaux, sans qu'il y ait à se demander si ces taxes pèsent sur les biens du concessionnaire possédés en vertu de baux perpétuels, ou sur tous autres de ses biens, de quelque nature qu'ils soient.

In the first place the Japanese Government would point out that the settlement ground-rent is paid in pursuance of the terms of the leases under which the land is held, and not in conformity with the provisions of any treaty.

In the next place they wish to say that they concur entirely with the Powers Complainant in the view that the ground-rent represents to-day precisely what it has always represented ever since the leases were issued, namely: the entire sum with which it is possible to burden the leased land so far as the lessees are concerned, whether such rent is called compensation for the use of the land, or land-taxes, or both such compensation and taxes, and regardless of the purposes to which the rent is appropriated.

But the Japanese Government find no evidence whatever, either in their international engagements relative to the Settlements or in the diplomatic correspondence or the history of the negotiations bearing on the subject of taxation, to support the contention that the foreign lessees of settlement land were, in consideration of the payment of ground-rent, permanently exempted from all or any municipal taxes. Neither can they discover in the principles of right and justice any ground for the claim to such exemption.

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With the coming into force of the Revised Treaties foreigners became liable to share with Japanese subjects in the common, ordinary burdens of taxation.

Aside from any question of compensation for the use of the land, the settlement ground-rent continues to represent the Imperial land-taxes in respect of the settlement land as well as the sum of the municipal burdens chargeable on such land for municipal purposes. The municipal services to which the settlement ground-rent was chiefly appropriated under the old regime, namely: the up-keep or maintenance of the settlement areas, represent only about 30 per centum of the total cost of municipal administration. (Case, p. 140.)

The national administration in all its various departments is now extended in full sovereignty over all foreigners in Japan, and the former Settlements have been incorporated with the Japanese Communes and now form part of the general municipal system of the Empire.

It is not understood how in the light of these facts it can be claimed on the one hand, that the foreign lessees of settlement land are entitled to exemption from taxation for municipal administration, while admitting on the other, that such lessees are liable to taxation for the national administration. Nor can the Japanese Government believe that the Powers Complainant in advancing that claim have given full consideration to the logical consequences of their contention.

In the former Settlement at Nagasaki for instance, there exist many governmental leases in perpetuity of less than *tsubo* 20 of land each, and not a few of less than 10 each. There is

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one such lease of third class land containing *tsubo* 9 of land and paying annually as ground-rent *yen* 1.08. In Yokohama there are settlement lots held under governmental leases in perpetuity measuring *tsubo* 31½ of land and paying annually *yen* 8.81 as ground-rent.

Several foreign institutions engaged in business in the late Settlements are actually paying thousands of *yen* every year as municipal taxes. According to the contentions of the Powers Complainant, the possession by each of those institutions of a settlement lease in perpetuity would relieve the possessors of all obligations to pay such taxes. If such were the case, if the ownership of such a lease carried with it such an immunity, then leases like those above referred to would be very valuable assets, not for purposes of residence or business, but as assignable and transmissible patents in perpetuity of exemption from taxation.

The Powers Complainant have, moreover, failed to indicate in any way the extent or compass of the immunity from taxation which they assert.

The Administration of the Empire for fiscal purposes is divided into three departments: Imperial, Local or Prefectural, and Municipal. Each of these administrative units possesses its own treasury and separate system of taxation. (Notes, pp. 42–47.)

The claim of the Powers Complainant is to immunity from all taxes corresponding to municipal services. It is not clear, whether they intended by that expression to include Local impositions.

The house-taxes which are alone involved in the present

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Arbitration, are in some cases Local, and in others Municipal charges. (Case, p. 160 and Notes, pp. 1–15.) It seems pertinent, therefore, to call attention to the above lacuna, because of the uncertainty whether the alleged exemption also includes Local as well as Municipal house-taxes.

Again, it has been shown that nearly 21 per centum of all the settlement buildings standing on land held under governmental leases in perpetuity, are actually owned by persons other than the lease-holders of the land. (Case, p. 175.) The Powers Complainant leave it in doubt, whether their claim on behalf of such lease-holders to immunity from Municipal taxation extends as well to non-lease-holding house-owners.

The Powers Complainant next propound (Mémoire, p. 37) the following question:

> De quel droit, le Gouvernement Japonais qui continue de percevoir la rente à son profit, modifierait-il quelque chose aux charges auxquelles il a été stipulé qu'elle correspond?

And they add the following statement:

> Rien, dans le texte des traités, ne l'y autorise.

The reply of the Japanese Government to that question, is that there has been no modification whatever in the charges to which the settlement ground-rent has always corresponded. The Arrangements by which such rent was in certain cases appropriated to certain services, have one and all been completely abrogated, and the rent although no longer appropriated by international engagements stands to-day as it always has

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stood, so far as the Japanese Government are concerned, in place of land-taxes and land-rates of all kinds. But even if those Arrangements were still in full force and the appropriation of the rent still continued, the specific municipal services to which it would under such circumstances in some instances correspond, would represent nothing more than the fair proportion of fiscal burdens falling on the land for municipal purposes, since those services represent only about 30 per centum of the total cost of municipal administration. To meet such total cost, all foreigners are bound to contribute equally with Japanese subjects.

The payment of ground-rent, which in part stands for municipal land rates, is no more an answer to a demand for the payment of other municipal levies than would the payment of the municipal business rates be an answer to a demand for the payment of the municipal income impositions or any other duly imposed municipal charges.

Touching the statement of the Powers Complainant immediately following the question just answered, the Japanese Government would point out that while the right of taxation and financial administration may be restrained by conventional stipulations, it can not be created by treaty grant,[1] and accordingly that the question is not how far the Treaties have authorized Japan to levy taxes and to regulate her finances, but what checks upon her freedom of action in those directions are imposed by her Treaties.

By the repeal of the old Treaties, the subsidiary Arrangements, and consular jurisdiction and all the exceptional

1. See *supra*, p. 12.

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privileges, exemptions and immunities connected with or resulting from such jurisdiction, the limitations upon the rights of the Japanese Government in the matter of taxation came to an end, and the only restraint now existing springs from the most favoured nation and national footing engagements in the Revised Treaties.

The Mémoire, after stating that the Notes from the Japanese Minister for Foreign Affairs above referred to admit in effect that exemption from taxation is guaranteed by the new Treaties in respect of the property held under leases in perpetuity, proceeds to ask a series of questions. Those questions and the answers of the Japanese Government are as follows:

Question. Or, que peuvent être ces biens, si ce n'est les terrains concédés par les baux et les maisons qui les couvrent?

Answer. The property held under the leases in perpetuity is nothing more than the property granted by those leases. The property so granted was exclusively land. Hence the property held under the leases is land alone.

Question. En vertu de quel titre sont possédées ces maisons, sinon en vertu des titres de baux?

Answer. The buildings standing on the leased land are held under titles of absolute ownership and not in virtue of the leases in perpetuity. The ownership of buildings in contradistinction to land, was authorized

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by the Treaties of 1858–1869 and is continued by the Treaties of 1894–1896. The leased land is the property of the State, and is subject to rent but exempt from taxation. The buildings standing on the leased land are, on the other hand, the absolute property of the lessees of the land or of persons holding under such lessees and are, it is the contention of the Japanese Government, subject to taxation but exempt from all charges in the shape of rent.

Question. Sur quoi Gouvernement Japonais peut-il s'appuyer pour établir une distinction entre les uns et les autres des ces biens?

Answer. The Japanese Government rely upon their unrestrained sovereign right to establish a distinction between land and buildings situated within the limits of the Empire. The question, therefore, is not, on what does Japan rely in establishing such a distinction, but, on what do the Powers Complainant rely in denying the right of Japan to establish that distinction.

Question. Ne forment-ils pas un tout indivisible?

Answer. Apart from any question of rights of sovereignty, the Treaties which granted to foreigners the right to lease land and to own buildings, created by such grant a clear distinction between such land and buildings. (Appendix, pp. 176, 178 and 179.) That distinction is maintained by the Treaties now in force. (Appendix, pp. 263, 271 and 273.) Nor can

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the Japanese Government for a moment doubt that, if they should for any purposes of their own claim that the settlement land and buildings in question were indivisible, were both held under the leases of land, the Treaty Powers would be justified in holding that such a claim was in disregard of treaty stipulations.

To illustrate: The Hiogo and Osaka settlement leases provide that for the non-performance of any of the conditions of the leases, the payment of ground-rent being one of those conditions, proceedings may be instituted against the lessees or their heirs or assigns. (Appendix, p. 216.) The remedy is not prescribed in the leases themselves, but the natural penalty in case of default in the payment of rent would be the cancellation of the lease and the restoration of the leased land to the Japanese Government. Supposing the Japanese Authorities should claim that the cancellation of the lease in such a case carried with it the confiscation of the buildings, on the ground that such buildings formed part of the leased land, it can not be doubted that such a claim would be resisted to the last by the owners of the buildings. Neither can it be doubted that such resistance would be entirely successful, having in view the legal conceptions prevailing in Japan on the subject of the separate ownership of land and buildings. (Notes, pp. 48–55.) In this connection it may be mentioned that even in the case of the Nagasaki leases the Consular Authorities, during the rule of consular jurisdiction, held that the penalty of

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confiscation of the buildings was optional (Appendix, p. 204); and in the two cases brought by the Japanese Authorities before the Consular Authorities—one in the British Consular Court and the other in the American Consular Court—for the cancellation of the leases and the confiscation of the buildings, the leases were in both cases declared null and void, but in neither case were the buildings confiscated.[1]

Question. Ne sont-ils pas tous possédés en vertu des titres de baux à perpétuité, et les droits de propriété que le Gouvernement Japonais reconnaît à leurs détenteurs, n'existent-ils pas sur les maisons comme sur le sol qui les porte ?

Answer. To reply to this query it is necessary to repeat: Land is the only property held in virtue of the leases in perpetuity in question. Those leases do not confer, neither do the Japanese Government recognize, the right of ownership (*droits de propriété*) in respect of the leased land. Such right of ownership exists only in respect of the buildings on the leased land.

Turning next to the question of the actual meaning of the Notes of the Minister for Foreign Affairs of October 21, 1901, the Japanese Government do not deem it necessary to follow the Powers Complainant in a discussion which appears to be largely based on errors in translation. They confidently believe that if the Members of the Arbitral Tribunal will consult the other versions of those Notes which are before

1. See *infra*, p. 138 and Appendix, pp. 16-21.

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them, all the obscurities complained of and all doubts regarding the true and exact significance of the documents will be removed.

Equally the Japanese Government feel it to be wholly unnecessary for them to add any thing to what they have already had the honour to lay before the Arbitral Tribunal, regarding the meaning to be assigned to the words "Grundstücke," "propriétés" and "property", as used in the conventional and complementary engagements set out in the preamble of the Arbitral Protocol. (Case, pp. 7, 86–87, 89–90, 92–93 and 185. Appendix, pp. 52, 99 and 147.) They are well satisfied that no arguments however ingenious, no suggestions however plausible, can qualify or dispose of the clear fact that the final equivalent of those words in the engagements referred to, limited and directed as they are by the context in which they are used, is the *settlement land held under governmental leases in perpetuity.*

In reference to foot-note (1) to page 38 of the Mémoire, the Japanese Government wish to supplement what they have already said regarding the meaning of the word "Grundstück" (Case, p. 14 note 2 and p. 185), by the suggestion that the special and enlarged significance which the German Government have by domestic law and for domestic purposes assigned to that word, can not be invoked against the usual and ordinary meaning of the word, to determine rights and interests in property outside the dominions of Germany.

In Article III of the Prussian Treaty of 1861 and the same Article of the North German Treaty of 1869, the word "Grundstücke" was used to denote property which Germans

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were only permitted to lease and not to purchase. The first of those Treaties was signed in German, Japanese and Dutch languages, while the second was not accompanied by a Dutch version. In both cases the Japanese equivalent used for "Grundstücke" was *chisho* or land, while the word *grond* appeared as its equivalent in the Dutch text of the Prussian Treaty.

In the settlement clause of the Japanese-German Treaty of 1896 the same word "Grundstücke" is used in referring to the property leased in virtue of the earlier Treaties, and the Japanese Government contend that the meaning attached to the word in Article III of the Treaties of 1861 and 1869, attach also to the same word in Article XVIII of the Treaty of 1896. It may be added that the Powers Complainant have themselves in their Mémoire translated the word "Grundstücke" appearing in the Treaties of 1861 and 1869 as *terrains*, while the same word used in Article XVIII of the Treaty of 1896 is rendered *fonds de terre*. (Mémoire, pp. 61, 62 and 200.) So in the same way, in the French versions of the Notes of the German Legation given on pages 245–265 of the Mémoire, the word "Grundstücke," wherever it occurs, is translated either as *terrains* or as *fonds de terre*.

Regarding foot-note (3) to the same page, it is submitted that the system of consular jurisdiction in its various parts and phases is an exceptional regime springing from special agreement, and that it does not represent the normal relations between organized, governed communities.

No Power ever assumed or exercised consular jurisdiction in Japan, except in virtue of express treaty stipulations.

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Exemption of foreigners from taxation was never expressly granted by Japan. Such exemption came into existence in connection with and as a consequence of consular jurisdiction, and it necessarily ceased with the termination of such jurisdiction. Consular jurisdiction meant when it was abolished, precisely what it did when it was established. It left behind, upon abolition, no exemptions or immunities which had been enjoyed as a part of it during its existence.

The mere abrogation, therefore, of the Treaties of 1858–1869 would have been quite sufficient to bring to a final end the exceptional, abnormal condition of consular jurisdiction. The termination of such jurisdiction would have had the effect of suppressing all the exceptional privileges, exemptions and immunities (including exemption from taxation), which had been enjoyed by foreigners as an incident of such jurisdiction. But desiring to place their intentions in seeking a revision of their ancient Treaties beyond the range of doubt, the Japanese Government secured the insertion in the repealing article of the new Treaties of a special clause not only expressly abrogating consular jurisdiction, but cancelling with equal explicitness all the exceptional privileges, exemptions and immunities then enjoyed by foreigners as a part of or appurtenant to such jurisdiction.

The Japanese Government are consequently unable to admit the existence of any ambiguity in their treaty engagements bearing upon the question at issue, which calls for the application of the recognized principles of interpretation which are employed for the purpose of determining the meaning of doubtful conventional stipulations. But even if it be acknowl-

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edged, as seems to be suggested by the Powers Complainant, that the settlement clauses of the Revised Treaties present some obscurity, then in that case the Japanese Government believe the doubt should be solved in favour of their contention, for the reason that exemption from the taxes in question would be inconsistent with the spirit of the existing Treaties and in derogation of the fundamental sovereign rights of Japan, and would moreover tend to establish an exceptional and inequitable differentiation in the matter of taxation, where, in the absence of express engagements or grants to the contrary, equal treatment is always presumed.

There is not in this connection, therefore, any question of the maintenance of a state of things from which the remainder of the Treaties derogate. In the matter of exemption from taxation during the regime of consular jurisdiction, and the revival of the right of taxation under the new Treaties, Imperial taxes stood in all respects upon precisely the same footing as the house-taxes and other Municipal imposts. It is consequently impossible without inconsistency to claim under this head, immunity from one class of taxes and at the same time to admit liability in respect of the other, and yet the Powers Complainant contend that the ancient order of things is continued so far as the house-taxes and other Municipal burdens are concerned, while they admit the obligation of foreigners to pay Imperial imposts.

Equally, there can be no question respecting the modification of the rights of foreigners established by an understanding previously existing, because exemption from taxation was never such a right. But even if such exemption could be

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classed as a right, the provisions of the Treaties tending to restrict or modify that right would be subject to the rule of broad construction, because such restriction or modification would be in the direction of justice and equal treatment in the matter of taxation. The universally accepted principles governing the interpretation of international engagements do not favour the perpetuation of unjust and inequitable conditions.

Under the title of "Volonté présumée des rédacteurs du traité," it is in effect asserted by the Powers Complainant (Mémoire, p. 39), that the imposition of the house-taxes which are in controversy would be a veritable spoliation, an exceptional, abnormal sacrifice, contrary to the rights of individuals. (Compare Mémoire, p. 46.) If that assertion could be sustained, the Japanese Government would be obliged to admit that the fact that the Revised Treaties are destitute of any stipulation reserving in express and unambiguous terms the right to impose the taxes in question, would be fatal to their claim.

But it is denied that such would be the consequences of the imposition of such taxes. The Japanese Government have, they believe, conclusively shown in Part IV of their Case that those taxes are neither excessive nor discriminatory, and that their claim to impose them is a claim in abatement of exceptional and differential exemption. The absence from the Treaties, in these circumstances, of any provisions granting in clear and explicit language admitting of no reasonable doubt, immunity from the taxes in question, justifies the Japanese Government, it is submitted, in maintaining that

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their right to impose the taxes is unimpeached and unimpeachable.

"Négociations de 1887 pour la revision des anciens traités," and

"Négociations de 1894 pour la revision des anciens traités."

Except in respect to the statements attributed to Viscount Aoki under the above heads, the Japanese Government have nothing to add to what they have already said on the subject of the treaty revision negotiations preceding the conclusion of the Treaties of 1894–1896.

It is quite true that Viscount Aoki in the capacity of Japanese Delegate to the Treaty Revision Conference of 1887, did institute a comparison between the rent and police-taxes then payable in respect of the land in the foreign Settlement of Hiogo held under governmental leases in perpetuity, on the one hand, and the land and building taxes which under the treaties then proposed would have been leviable, on the other. This was in reply to the statement contained in the report of the Netherlands Consul at Hiogo to the Netherlands Minister in Tokio to the effect that "the taxes [ground-rent] the land-"renters pay to the municipality [of the Settlement] are "probably six times the amount of taxes levied in the best "part of the native town."

Foreigners in the Settlement enjoyed at the time complete immunity from taxation of all kinds, Imperial equally with Municipal, excepting only the payment of settlement ground-rent, whereas, Japanese subjects residing in the Japanese town were subject to all kinds of taxes. Viscount Aoki's

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comparison, therefore, would only have been complete, if it had included all the various imposts to which foreigners in the Hiogo Settlement would have been amenable under the treaty revision project then in contemplation. But no data were then available for estimating such imposts other than those leviable in respect of the land and buildings, and accordingly Viscount Aoki's remarks had to be correspondingly limited. It is admitted that, if the project of 1887 had been put into force, land-taxes would have replaced settlement ground-rent and foreigners would have become liable to all other taxes including settlement house-taxes.

The dispositions of the Revised Treaties relative to the late Settlements are practically the same as those contained in the scheme of 1887, except that the ground-rent, which fails to equal the estimated land-taxes by about 30 per centum (Case, pp. 143 and 144), is continued and the settlement land is consequently exempt from taxation.

In these circumstances the Japanese Government wholly fail to see how the collation made by Viscount Aoki between the ground-rent then collected in respect of the settlement land and the contemplated land and building taxes, can be held to mean that the ground-rent includes house-taxes any more than that it includes all taxes, Imperial as well as Local and Municipal, from which foreigners were as much exempt as from the house-taxes.

The Japanese Government are compelled to add that they find nothing in the observations of Viscount Aoki to justify the assertion contained in the Mémoire (page 40), that the Japanese Representative "écrivait en 1887 que la rente

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"foncière représente à la fois les impôts sur les terrains et les "bâtiments."

The governmental leases in perpetuity are purely and simply leases of land, and the Japanese Government maintain that those leases do not and were never intended to comprise the buildings, which were erected on the land by the lessees after the leases were granted. As under the proposals of 1887 the settlement ground-rent which was to have been replaced by land-taxes, represented nothing more than the burdens on the land, and as foreigners would admittedly have been obliged to pay house-taxes and all other imposts; so under the Treaties actually in force, the ground-rent still continues to represent merely the burdens on the leased land, and it is contended by the Japanese Government that foreigners are now no less liable to pay house-taxes and all other assessments than if the scheme of 1887 had been put into operation. That contention is, moreover, strengthened by the fact that the present burdens on the settlement land are considerably less than they would have been if land-taxes had replaced the ground-rent.

Touching the intimation of the Japanese Delegate, which is cited in the foot-note (1) to page 39 of the Mémoire, it should be pointed out that that intimation, as is shown by the context, had reference exclusively to the property paying ground-rent and in respect of which the subjects and citizens of the Treaty Powers stood in the relation of "les détenteurs étrangers" or "foreign land-holders." That property was land alone.

On page 41 of the Mémoire under the head, "Raison

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justice qui ont inspiré les rédacteurs des nouveaux traités," it is said:

> Du moment qu'ils maintenaient cette rente, la logique les forçait à décider que le Gouvernement Japonais devait continuer à être tenu, en échange de son payement, aux mêmes services que par le passé, services correspondant aux impôts fonciers et aux taxes destinées à faire face aux charges municipales. Pourquoi, par la volonté des nouveaux traités, la rente représenterait-elle moins que par le passé?

The Japanese Government admit that during the existence of the Treaties of 1858–1869 and the Arrangements subsidiary thereto, they were under obligation to perform certain municipal services in consideration, in some instances, of the payment of the ground-rent as in the case of Tokio (Appendix, p. 234 Article V), and independently, in others, of such rent as in the case of Hiogo and Osaka. (Appendix, pp. 212 and 213 Articles VI and IX.) But with the termination of those Treaties and Arrangements and the merging of the several Settlements in the general municipal system of the Empire, the old condition of things naturally came to an end.

The ground-rent, although less than the estimated land-taxes (Case, p. 143), continues to represent as it always has represented, the entire fiscal burdens falling on the settlement land. It represents now nothing less than it did in the past, and the Japanese Government deny that it represents any thing more. They deny that such rent was ever intended to correspond, in commutation, to all municipal charges, any more than it was intended similarly to correspond to all Imperial mposts.

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As a result of the enforcement of the new Treaties, foreigners were placed upon a national as well as a most favoured nation footing in the matter of their fiscal obligations, and they are in consequence now expected to contribute their full and just proportion towards the support of the National Government and the Local and Municipal Administrations, where formerly the ground-rent was their only contribution. The municipal services to which the settlement ground-rent was, in some instances, assigned under the former subsidiary Arrangements, represent but a small portion of the total cost of government in its various branches. (Case, p. 140.)

The Powers Complainant, continuing their remarks under the heading above given, next express the conviction that the negotiators of the new Treaties could not have intended to exempt land from taxation without extending the same immunity to the buildings thereon. Such an intention, they declare, would imply a complete separation of the land and buildings which, they add, would be illogical and practically impossible. The exemption of land from taxation, they continue, would not be real unless the immunity extended as well to the buildings, since the value of the land serves as the basis of the house-taxes. They then state:

> Pour prétendre que la rente payée par les concessionaires étrangers ne doit plus correspondre, comme par le passé, à toutes les obligations pouvant leur incomber, le Gouvernement Japonais est forcé de supposer entre la propriété du sol et celle des immeubles construits sur ce sol une distinction *nouvelle*, en vertu de laquelle les terrains seraient dégrevés de tous droits et non les maisons édifiées sur ces terrains.

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Finally they repeat under the emphasis of italics that, as they have already shown by their study of the treaty revision negotiations, the distinction between land and buildings appeared *for the first time* with the *new* claims of the Japanese Government.

Replying to the first of the above observations, the Japanese Government would point out that they find nothing either in the Revised Treaties or the negotiations leading up to those Treaties, which indicates an intention on the part of the negotiators of the new Treaties, to extend to the buildings in question the immunity from taxation actually enjoyed by the leased settlement land.

Such land was, when the Treaties of 1894–1896 were negotiated, entitled to exemption from taxation in virtue of the laws of Japan. By the settlement clauses of the new Treaties, that condition of things was continued as a conventional right. The buildings standing on the leased land were, on the other hand, subject under the laws of Japan to separate taxation, but the right to impose those taxes was in abeyance during the existence of the Treaties of 1858–1869. The recognized purpose of the Revised Treaties was to do away with the exceptional conditions prevailing in consequence of consular jurisdiction and to establish for Japan relations based upon principles of equity and mutual benefit. In fulfillment of that purpose the right of Japan, among other things, to levy all kinds of taxes was fully recognized, subject only to the restraint imposed by the most favoured nation and national footing stipulations contained in Article I of the German and British Treaties and Article III of the

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French Treaty. In these circumstances and in the absence of any express engagement to the contrary it must be presumed, the Japanese Government believe, that it was the intention of the negotiators of the Revised Treaties to accord to Japan the same liberty of action in the matter of taxation, as was extended to the other Parties to those Treaties.

The Japanese Government wish to say in answer to the statement that the separation of land and buildings would be illogical and practically impossible, that, whether logical or illogical, such separation does in fact exist and has in fact immemorially existed throughout Japan. (Notes, pp. 48–55.) In connection with this point the Japanese Government desire to draw attention to the Declaration of Professor Tomii, which will be found at page 5 of the Appendix to this Counter-Case. They will add that upon this branch of the civil law of Japan no person can speak with greater authority than Professor Tomii.

The next contention of the Powers Complainant as given in the above summary, is a revival of the claim advanced by the German *Chargé d'Affaires* in his Note of August 24, 1900. (Appendix, p. 36.) The Japanese Government have already replied to that claim. (Case, pp. 186–187.) They have nothing to add to that reply, except to say that the value of land does not serve as the basis of the house-taxes.[1] (Notes, pp. 1–15.)

1. In correction of the statement contained in foot-note (1) to page 41 of the Mémoire, it may be pointed out that for purposes of the house-taxes the Yokohama settlement land is placed in class 5 and the bluff land in class 9, instead of classes 2 and 4 as stated in that foot-note.
See *infra*, p. 165.

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Regarding the extract last above quoted from the Mémoire, the Japanese Government are constrained to express regret that the Powers Complainant should have permitted themselves to attribute to the Japanese Government action and motives which can scarcely be reconciled with perfect good faith. The Japanese Government deny that the distinction between land and buildings was newly invented by them for the purpose of supporting their claim in the present controversy, and they also deny that that distinction appeared for the first time in connection with that claim. The most cursory enquiry would have disclosed the absolute groundlessness of the charge. The particulars contained in the Notes to the Case of Japan, pages 48–55, which were matters of public knowledge, show that the severance of land and buildings for all purposes is a principle of long standing in Japan. The fact, which must have been known to the Powers Complainant, that within the Mixed Residence Quarter at Hiogo foreigners have since 1888 paid house-taxes (Case, pp. 145–155) under conditions which are practically the same as those now prevailing in the settlement areas, proves that the segregation of buildings from land actually existed long before the present issue arose. Finally, if the study which the Powers Complainant have up to this point of their Mémoire devoted to the treaty revision negotiations, has tended in any way to show that the distinction between land and buildings first appeared in connection with the claim now under discussion, that fact has entirely escaped the attention of the Japanese Government.

The Mémoire next declares:

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> Ni (A) *dans ses principes*, ni (B) *tel qu'il a été appliqué dans les concessions*, le système des baux perpétuels ne connaît de distinction entre le terrain et les constructions qu'il supporte et nombre de dispositions prouvent, au contraire, que la propriété du sol et celle des immeubles ont, dans les concessions, toujours été confondues, tant aux yeux du Gouvernement Japonais qu'à ceux des concessionnaires étrangers.

The Mémoire then proceeds under the two heads above indicated, to explain the grounds upon which the above declaration rests. It is noticeable that in making such explanation, the Hiogo Settlement no longer serves as a type, but reference is made to the earlier Settlements of Yokohama and Nagasaki. The reason for this is apparent: The explanation is based largely on the forfeiture and confiscation clause in the leases in perpetuity and the building conditions, and it is only in the Yokohama and Nagasaki leases that that clause appears, while the only international Arrangement containing that condition was the one relating to Nagasaki.[1]

As to the statement that the leases in perpetuity do not recognize the distinction between land and buildings, it may be pointed out that the Japanese Government have already explained that that distinction was fully recognized by both the old and new Treaties,[2] and it may be added that so far as the leases in question are concerned that distinction is fundamental, since those leases are wholly and exclusively leases of land. Nor has there ever been in the eyes of the Japanese Government any blending or fusion of settlement land and

1. As to Yokohama, the French Consular Ordinance and the Consular Land Regulations (Appendix, pp. 329 and 332) contained similar conditions, but the Japanese Government were not a Party to those Instruments.

2. See *supra*, pp. 118–119.

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buildings in the matter of ownership, and so far as they can discover, their action has been entirely consistent with their legal conceptions.

During the existence of consular jurisdiction, the legal relation between land and buildings in the Settlements was a matter in which the Japanese Government had and could have no direct concern. Questions affecting those pieces of property were brought before and decided by the Authorities of the defendant's country, who could not in any case be the Japanese Authorities, since Japanese subjects were not permitted, except in a few instances at Nagasaki, to acquire either land or buildings within settlement limits. It was only in the matter of the registration of transfers of leases in perpetuity or the purchase by the State of such leases and the buildings on the leased land that the Japanese Authorities had any thing to say.

The Local Japanese Authorities during the existence of consular jurisdiction registered all transfers of settlement leases in perpetuity, but such registrations did not in any case include buildings. Regardless whether the transfers were of land alone or of land and buildings, the registrations were invariably limited exclusively to the land for the reason that the leases in perpetuity, which it was the duty of those Authorities to register, were nothing more than leases of land.

Prior to the abrogation of the old Treaties, the Japanese Government found it necessary to acquire for the use of the Bureau of Posts and Telegraphs, two pieces of land in the Yokohama Settlement, namely, Lots Nos. 169 and 170. Buildings stood at the time on both said Lots. Those build-

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ings the Japanese Government were obliged to purchase in order to obtain the land. From the documents evidencing the transactions[1] it will be seen that the leases in perpetuity were surrendered and that the Japanese Government, in both cases, were careful to have it made perfectly clear that they had become the owner of the buildings.

No other purchases of leases of settlement land with buildings have been made by the Japanese Government. But they believe that the two examples given above, coupled with the practice of the Japanese Authorities in the matter of the registration of settlement leases in perpetuity, will establish the fact that they did not lose sight of the distinction between land and buildings.

Respecting the remarks contained in Paragraph *a* on page 42 of the Mémoire, the Japanese Government think that what they have already said on the subject furnishes a sufficient answer.[2] (Case, p. 67.)

On the subject considered in Paragraph *b*, the Japanese Minister for Foreign Affairs in his Note of March 15, 1902, to the British Minister at Tokio (Appendix, p. 156), made use of the following language:

> And in order to draw more sharply if possible the distinction which really exists in the matter of title, between the leased land and the buildings thereon, I beg to invite Your Excellency's attention specifically to the forfeiture clause in the leases which you cite. It is therein declared that in case of default in any of the specified directions, the lease "shall become null and "void and the buildings on said land shall become the

1. See Appendix, pp. 6–9.
2. See *supra*, pp. 84–88.

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"property of the Japanese Government."

It may, I think, be fairly assumed from this provision that those who were responsible for the form of the leases in question, shared the view of the Imperial Government that the buildings can not be said to be held under the leases; for if the leases cover both kinds of property, then the mere cancellation of those instruments would be sufficient to vest title to the buildings equally with the land in the Government.

In their Case at page 26, the Japanese Government made on the same subject the following observations:

> It will be observed that the forfeiture clause in the several forms above referred to, recognized in all cases, that the buildings were not covered by the leases; for if it could be said that the buildings equally with the land were held under the leases, then the buildings equally with the land would revert to the Japanese Government upon the leases becoming null and void, and the concluding words of the clause, "and the "buildings on said land shall become the property of "the Japanese Government," would be nothing more than meaningless verbiage.

They do not find it necessary to add any thing to the above remarks touching the general question.

Regarding the explanation offered by the Powers Complainant that the clause in the Yokohama and Nagasaki leases providing for the confiscation of buildings was not to be understood in the sense of an additional penalty, but merely as a notice for the enlightenment of the lessees of consequences which would naturally and inevitably follow the nullification of the leases because of the assumed indivisibility of land and buildings, it may be said that the suggestion is ingenious but scarcely convincing, having in view the actual practice

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which obtained on the subject.

Reference has already been made[1] to the two cases brought by the Japanese Authorities at Nagasaki before the British and American Consular Courts at that port for the enforcement of the penalties denounced in the leases for default in payment of rent. The particulars of those cases are given in the Appendix to this Counter-Case at pages 16–21. It will be seen from the records, that in both cases the leases were declared "null and void," but that in neither instance did the buildings "become the property of the Japanese Government." In one case—that before the British Court—execution was issued upon the buildings and they were sold to satisfy the judgment of the Court, which was for the rent in arrears and for costs. Out of the proceeds of the sale the over-due rent was paid by the Court to the Japanese Authorities, and it is presumed that the balance of such proceeds was duly accounted for to the defendant in the case. The land having become vacant in consequence of the cancellation of the lease, application was, in due course, made by a third person for a lease of the Lot in accordance with Article I of the Nagasaki Land Regulations. (Appendix, p. 196.) A new lease of the land was duly granted, and the new lessee acquired the buildings standing on the land from the person who had purchased them at the auction sale. In the other case, the rent in arrears was paid after the leases had been cancelled, and the buildings in consequence were not sold. A new lease of the land was issued upon due application to the brother of the original lessee. In neither case did the

1. See *supra*, p. 120.

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buildings or any interest in them pass into the hands of the Japanese Government, but in both instances the question of ownership was determined exclusively by and between the parties interested. The new leases like the old ones, were both solely leases of land.

So far as the Japanese Government are aware, no other proceedings involving the question of the cancellation of settlement leases and the confiscation of settlement buildings, were ever instituted by the Japanese Authorities before the Consular Courts. The two cases cited, however, go to show that the theory advanced by the Powers Complainant that the settlement land and buildings were indivisible and that the cancellation of the leases of land carried with it as a necessary consequence the confiscation of the buildings, did not have the support of those Consular Tribunals that were called upon to consider the question.

Again the distinction between land and buildings was clearly recognized in paragraph 5 of the Note from the British Minister to the Japanese Minister for Foreign Affairs, dated April 27, 1860. (Mémoire, p. 67 and Case, p. 365.)

The Japanese Government have already given sufficient consideration, they think, to the subject discussed in Paragraph *c*.[1] (Case, pp. 20–23 and Appendix, pp. 154–155.) But they can not pass over in silence the suggestion regarding the reasons, which induced the Japanese Government to give their adhesion to the building requirement in the Nagasaki Land Regulations. (Appendix, pp. 196–197.) The question at the bottom of page 43 of the Mémoire coupled with the

1. See *supra*, pp. 94–95.

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conjunctive reference to Canada, betrays an unexpected want of knowledge concerning the actual condition of affairs in Japan, when the first Settlements were established. The Japanese Government of 1860 no doubt concerned themselves very seriously regarding the future, but they thought—erroneously thought—that they saw their advantage in remaining inhospitable to foreign intercourse, in restricting rather than extending their relations with the outside world. That such was the policy of the Japanese Government at that time is a well recognized historical fact, with which the correspondence relating to the selection of the Yokohama and Nagasaki settlement sites produced in the Appendix to the Case of Japan is wholly consistent.

It has been seen that the building condition contained in the governmental land-leases in the Bombay Presidency did not have the effect of exempting the buildings from taxation.[1] Unless it can be said that the rule which obtains in Bombay is reversed in Canada, and that the building requirement in the Canadian land-grants serves by itself as a perpetual bar to the imposition of any taxes in respect of the buildings standing on the granted land, the reference to Canada can have no bearing on the present controversy.

Paragraph *d* is devoted to a study of the so-called "Kobe Hill Lots." By Arrangements concluded in 1888 between the Japanese Government and the Powers concerned, it was expressly provided that a fixed and permanently settled rent in commutation of all taxes, rates and charges payable in respect both of the land and buildings, should be charged on

1. See *supra*, pp. 69–70.

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the lots in question. The fact that the rent in case of those lots includes all taxes leviable on the buildings, is cited by the Powers Complainant as an argument in support of their claim that the rent payable in respect of the settlement land should also be held to include the house-taxes.

The force of that argument does not appeal to the Japanese Government. If it could be shown that in fixing the rates of rent for settlement land, the taxes payable in respect of buildings had been taken into consideration as in the case of the Kobe Hill Lots, or if the Arrangements relative to the Settlements had provided, as did the Kobe Hill Lots Arrangements, that the rent was to include all house-taxes, then the settlement buildings like the buildings on the Kobe Hill Lots would have been free of all other taxes. It is because there is not the slightest evidence to show that the imposts on buildings were considered in connection with the fixation of settlement ground-rent, and because the settlement Arrangements will be searched in vain for the slightest suggestion that such ground-rent was in any case intended to include house-taxes, that the Japanese Government contend on the one hand that settlement buildings should be subject to taxation, while admitting on the other that the buildings on the Kobe Hill Lots are exempt from all imposts other than those covered by the rent.

In addition to the Kobe Hill Lots, which are alone referred to in the Mémoire, the Japanese Government leased in perpetuity to foreigners in pursuance of the communication from the Governor of Hiogo, under which the Hill Lots leases were granted, twelve lots of land in the business portions of the town of Kobe in close proximity to the Settlement. (Case,

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pp. 145–155.) Unlike the Hill Lots, the rent of the land was agreed upon when the other terms of tenure were arranged, and the amount of the rent was in each case inserted in the leases. Two of the leases contained stipulations to the effect, that the leased land was subject only to such taxes as are in conformity with the Treaty and Convention stipulations for Hiogo (Kobe). (Case, Table facing p. 148 and Appendix, p. 256.) But none of the leases contained any engagements on the subject of house-taxes. It has already been seen that the communication from the Governor of Hiogo did not confer upon Japan any right of taxation, but merely made available an existing right which was in abeyance. (Case, p. 151.) These extra-settlement leases, therefore, stood in relation to the Hill Lots in all respects in precisely the same position as did the settlement lots after the supression of the settlement organization. As the leases of the extra-settlement lots in question contained no provision showing that house-taxes had been taken into account in determining the rent, and as, in like circumstances, Japanese subjects would have been liable to house-taxes, the Japanese Government believed that foreigners were similarly liable. Accordingly, in 1889 taxes in respect of the buildings standing on the extra-settlement lots above mentioned were imposed, and have ever since then been collected without opposition or question. (Case, pp. 149–150.)

Again on pages 152–155 of the Case of Japan, full particulars are given regarding the leases acquired by foreigners of privately owned extra-settlement land at Hiogo. Considering the important bearing which the condition of affairs in the Mixed Residence Quarter at Hiogo has upon the

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question at issue, it is noticeable that the Powers Complainant confined their investigation exclusively to the Kobe Hill Lots. The observations contained in the fourth paragraph of the "Note Préliminaire" on pages 88 and 89 of the Mémoire, justifies the conclusion that those Powers were unaware of the existence at Hiogo of any extra-settlement governmental leases in perpetuity in favour of foreigners, other than those in respect of the Kobe Hill Lots, and that they had moreover no knowledge of the fact that for fifteen years foreigners have been paying house-taxes in respect of their extra-settlement buildings at that port.

Regarding the question of the alleged fusion in actual practice, of land and buildings, which is the subject next discussed in the Mémoire under the head, "Tel qu'il a été "appliqué dans les concessions étrangères, le système des baux "perpétuels ne connaît point de distinction entre le terrain et "les propriétés qu'il supporte," it is in order to say that in all cases involving the surrender of settlement leases in perpetuity and the acquisition of the buildings in which the Japanese Government were a party in interest, the instruments in proof of the transactions have uniformly recited the fact that the buildings were assigned.[1]

The only transfer of settlement land and buildings in which a foreign community was interested as a party, was, so far as the Japanese Government are aware, the assignment by the Hiogo (Kobe) Settlement Municipal Council of the Municipal Lot and the buildings thereon. By reference to the deed in that case it will be seen that a distinction as clear and

1. See *supra*, pp. 135–136 and Appendix, pp. 6–9.

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emphatic as has ever been claimed by the Japanese Government, was there drawn between the land and buildings.[1]

Between the 6th July, 1899, when Imperial Ordinance No. 329 was promulgated (Appendix, pp. 278–280), and the 4th August following, when the Franco-Japanese Treaty came into operation, no less than forty-seven declarations of construction of buildings were registered in the French Consulate at Yokohama. Those declarations of which two specimens are given in the Appendix,[2] covered, it may be assumed, practically all the buildings in Yokohama then owned by French citizens. Copies of those declarations were transmitted by the French Consul to the District Court at Yokohama, and were accepted by the latter as having under Article V of Imperial Ordinance No. 329 above mentioned (Appendix, p. 280) the same value as actual registrations.

Neither in the above declarations nor in any of the other instruments referred to under the present head, nor in the two Nagasaki consular cases cited under the previous caption, is there any suggestion of that indivisibility of land and buildings which is claimed by the Powers Complainant, but on the contrary there is in those several acts a distinct recognition of the established principle of Japanese jurisprudence that land and buildings constitute separate and distinct items of property—a principle which in the absence of express engagements on the subject must, it seems to the Japanese Government, be conclusive in respect of land and buildings in Japan.

1. See Appendix, pp. 9–15.
2. See Appendix, pp. 21–24.

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Regarding the significance of the forfeiture clause in the Yokohama and Nagasaki leases in perpetuity, the Japanese Government have, they think, already made their position sufficiently clear.[1]

As to the question of consular registration which is next referred to in the Mémoire, the Japanese Government find nothing in the statement of the Powers Complainant on the subject tending to strengthen the theory of the inseparability of land and buildings. If, as is asserted, consular registers in the matter of mortgages failed to make any reference to buildings, even when buildings were the principal part of the property hypothecated and were expressly mentioned in the deeds of mortgage, that fact would serve to prove nothing more than the incompleteness of the registrations. But the Japanese Government have reason to believe that that method of registration was quite exceptional. Investigations at Yokohama show that nearly all the mortgages of settlement immovables were registered at either the German, French, British or American Consulates. At the German Consulate only abstracts of the mortgages were made, while at the other three Consulates full and complete copies of the deeds were kept. The German, French and American Consuls transmitted to the District Court in pursuance of Article V of Imperial Ordinance No. 329 of 1899 (Appendix, p. 280) full transcripts of their respective registers, but the British Consul forwarded abstracts only of his register. So far, therefore, as original records were concerned, it was only in the German consular register that the omissions referred to could have occurred.

1. See *supra*, pp. 119–120.

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But similar omissions may have been made in the abstracts supplied to the District Court by the British Consul.

The question of the legal effect of such omissions need not be discussed at this time and in the present connection. It is not, however, out of place to state that the French consular registries now in the possession of the District Court, cover 9 mortgages, 8 of which contain expressions of similar import to the words "with the buildings thereon," while the American consular registries filed with the same Court include 103 mortgages, of which 92 contain the phrase "with the buildings thereon" or words to that effect. It is assumed in respect of the remaining 12 mortgages, that the hypothecated land was unimproved or that it was not intended to mortgage the buildings.

With regard to British consular registration, it should be added that it was unusual to register rights in immovables other than those created by mortgages. The registration of mortgages was authorized by Articles 22 and 23 of the Order in Council of October 25, 1881, which read as follows:

> 22. A deed or other instrument of mortgage, legal or equitable, of lands or houses, in China or in Japan, executed by a British subject, may be registered at any time after its execution at the consulate of the consular district wherein the property mortgaged is situate.
>
> 23. Registration is made as follows: The original and a copy of the deed or other instrument of mortgage and affidavit verifying the execution and place of execution thereof, and verifying the copy, are brought into the consulate; and the copy and affidavit are left there.

It is worthy of remark that in the foregoing provisions

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the British Government drew as clear a distinction between land and buildings as do the Japanese Government.

The statements in the Mémoire to the effect that the Japanese Authorities have never considered that the registration of transfers, where land alone was mentioned, would not at the same time be proof of the transfer of the buildings and that even now in the matter of the imposition of the house-taxes such Authorities regard as owners of the houses, not the builders, but the lessees of the land, are wholly inexact. The Japanese Authorities, so far as they have had occasion to consider the question, have never looked upon the registration of transfers of land alone as proof that such transfers were also transfers of the buildings standing on the land. Neither have they in imposing house-taxes, regarded the lessees of the land as the owners of the buildings. They made very full and careful investigation in order to ascertain the actual owners of the buildings, and in cases where their labours yielded no results, they followed the presumption of Japanese law which is that the occupiers of buildings are the owners.

The Japanese Government following the order established by the Mémoire, deny the assertion that at the time of the negotiations of 1887 or at any other time, the settlement buildings were owned under the deeds in virtue of which the land was held. The leases themselves show that the only property granted by the leases was land, and no property not granted by the leases can be held under or by virtue of the leases. (Case, p. 191.) This contention is supported by the fact that in case of the cancellation of the leases the buildings remain the property of the lessees. Again, an examination of

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the settlement clause of the project of 1887 will make it equally clear that the leased land was the only property then under consideration. (Case, pp. 74–78.) Besides, it must not be forgotten that a very considerable proportion of the settlement buildings are owned by persons other than the lessees of the land. (Case, p. 175.)

Responding to the question which next appears in the Mémoire, the Japanese Government can only repeat what they have already more than once declared,[1] that they did not upon the coming into operation of the new Treaties, inaugurate any new distinction respecting the settlement leases in perpetuity. The distinction between land and buildings was already *de facto* and *de jure* in full force.

The only property in respect of which the negotiators of the Treaties of 1894–1896 desired to perpetuate the existing immunity from taxation, was the property held under the perpetual leases. To that extent the continuation of the old order of things was not only just and right and in the direction of equal treatment, but in accordance with the laws of Japan; and to that extent, therefore, the settlement clauses of the new Treaties confirmed and maintained the existing conditions.

It was because exemption of privately owned settlement buildings from taxation would have represented a clear departure from the principle of equal treatment and an unjust and inequitable discrimination, that the Revised Treaties did not expressly grant such exemption; and in the absence of such a grant, immunity from house-taxes could not in the

1. See *supra*, pp. 33–36, 53 and 132–133.

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actual circumstances of the case be presumed any more than a like immunity could be presumed in respect of all other taxes imposed on foreigners for the first time after the new Treaties took effect.

The Powers Complainant next discuss the question in controversy from an equitable point of view, and in doing so they say that the Japanese Government in support of their contention have on different occasions advanced the following "arguments d'équité."

> I. Le taux de la rente foncière a fixé taxé [été fixé] lorsque le terrain était nu; depuis des constructions importantes ont été élevées; le taux de la rente peut ne pas être élevé, mais les édifices bâtis doivent acquitter leur quote-part des taxes municipales et locales destinées à la voirie et aux services publics.
>
> II. Les privilèges dont jouissent les propriétés possédées par les étrangers en vertu des baux perpétuels constituent une limitation inacceptable aux droits de souveraineté du Japon. Il est injuste que des étrangers jouissent de privilèges inaccessibles aux sujets japonais.

The arguments which are thus attributed to the Japanese Government are not in all respects entirely exact. As to the ground-rent, the Japanese Government have always maintained that in the fixation of such rent the buildings were not in any way or to any extent taken into consideration. It was and is exclusively a charge in respect of the land in its unimproved condition. It represents, and has always represented, nothing more than the compensation for the use of the land and all the taxes and rates payable in respect of the land. It can neither be increased nor decreased without the consent of the parties in interest and the rate of such rent is not, neither has it ever

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been, affected by the construction or destruction of buildings on the land. So far as the house-taxes are concerned, it is the contention of the Japanese Government that foreign-owned settlement buildings, equally with all other buildings, are amenable to the revenue laws of the Empire. If those laws impose the taxes for certain special purposes or services, that assignment also applies to the settlement buildings in question; but if, as is usually the case, such taxes are assessed to the general Local and Municipal revenues, then the taxes payable by such settlement buildings go to the general Local and Municipal Budgets.

Again, the Japanese Government have never asserted that the privileges enjoyed by property held by foreigners under leases in perpetuity constituted an unacceptable limitation upon the sovereign rights of Japan. On the contrary they have invariably held that the privileges actually enjoyed by such property being consistent with the laws of Japan and the principle of equal taxation, were wholly unobjectionable. It is the claim in respect of property not held under leases in perpetuity, that has provoked the opposition of the Japanese Government. That claim is a claim to exemption from taxation in favour of privately owned buildings standing on land held under leases in perpetuity. Such exemption would be in disregard of the rule of equal treatment in the matter of taxation, and it is maintained by the Japanese Government that the claim in the present instance to exceptional and differential exemption from common fiscal burdens being in derogation of an essential attribute of sovereignty, is subject to the rule of strict interpretation. The right to such exemption can only

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exist in virtue of clear and express grant. It can not be found in the irregular and doubtful realms of implication. (Case, pp. 10, 100, 155 and 190.)

Under the head of argument I the Powers Complainant ask the following questions:

> (a) Sans doute, par l'édification des maisons qu'aujourd'hui ils supportent, les terrains concédés ont augumenté de valeur, mais ces maisons, qui les a construites?
>
> (b) Il se peut que les sacrifices au début consentis par les preneurs aient porté leurs fruits; mais ces sacrifices, en se fiant à quelle garantie les ont-ils consentis?
>
> (c) Ne serait-t-il pas injuste que le vendeur revînt aujourd'hui sur son contrat, sous prétexte que l'acheteur a augmenté la valeur de sa propriété et qu'il exigeât de lui un prix plus élevé?

To those questions the Japanese Government submit the following answers:

(a) The buildings in question were constructed by the lessees of the land or by persons holding under such lessees. Those buildings, beyond doubt, increased the value of the leased land, but considering that the land is held under perpetual leases and that the charges on the land are immutable, it must be said that the lessees chiefly benefitted by such increase in value. But in any case the fact of such construction is no answer to a demand for the payment of taxes on the buildings.

(b) The Japanese Government do not fail in appreciation of the benefits which have accrued to them in every direction from their foreign relations. But they can not discover in the action of foreign merchants in establishing

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commercial relations with Japan, any indication of abnormal sacrifices on their part. In the earlier days of their residence they secured their land without the payment of any purchase money whatever, and for forty years they enjoyed immunity from taxation.

(c) The Japanese Government have not modified their contracts under any pretence whatever. The contracts referred to relate to land exclusively, and in their terms and conditions they remain unaltered and unalterable. The basis of the suggestion that the Japanese Government wish to modify the leases in perpetuity, is the fact that they object to include in the purview of those leases, buildings which are already the absolute property of the lessees of the land.

The Powers Complainant in support of their "arguments d'équité" have attempted to institute a comparison between the taxes paid by foreigners and Japanese. For that purpose they had recourse to newspaper reports rather than official statistics which were easily procurable. It is true the official accounts would not have lent themselves to an analysis so favourable to the contentions of the adverse Party as that presented in the Mémoire, but those accounts would have possessed the superior advantage of accuracy which is lacking in the reports employed.

In foot-note (1) to page 47 of the Mémoire, in speaking of the settlement ground-rent paid by foreigners at Hiogo it is said "dont l'equivalent n'existe pas pour les Japonais." This is an error. The land taxes and rates are the equivalent for the Japanese. The foreign lease-holders pay ground-rent, which takes the place of the Imperial land-taxes and the Municipal

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land-rates that are paid by the Japanese. It has, however, already been shown that in the case of the Hiogo Settlement, the ground-rent actually reserved is less than the land taxes and rates would be if the land were made subject to taxation instead of rent. (Case, pp. 124–125.)

The table given in the same foot-note on page 48 of the Mémoire, is wholly inaccurate and the conclusions deduced therefrom are naturally no less misleading. Instead, therefore, of examining the condition of affairs in Hiogo from the incorrect stand-point of that table, the Japanese Government present the following statement in tabular form, which gives the total amount of taxes, Imperial and Municipal, actually levied in the Hiogo Municipality for the 34th fiscal year (1901–1902) together with the proportion paid by foreigners:

Items.	Amount of taxes imposed in the whole city.	Amount of taxes imposed on foreigners.	Percentage of taxes paid by foreigners.
	yen	yen	
Land tax, Imperial	98,047.63	.....	08.6
„ rates, Municipal and Ward ..	52,973.56	.....	
Ground rent	... .	12,915.34(1)	
House taxes, Municipal and Ward	284,699.40	11,283.45(1)	04.0
Income tax, Imperial	203,609.16	23,634.99	13.0
„ rate, Municipal	118,960.34	18,352.23(1)	
Business tax, Imperial	223,351.61	37,367.68	15.1
„ rate, Municipal	196,718.26	26,205.20(1)	
Miscellaneous taxes, Municipal ..	139,817.04	580.63(1)	00.4
One percentage tax, Municipal ..	27,232.07	nil.	
Total	1,345,409.07	180,339.52	09.7

(1) See Case of Japan, pp. 121–123.

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It will thus be seen that foreigners in Hiogo pay a little less than 10 per centum of all the direct taxes contributed by the Municipality, and the Japanese Government believe they will experience no difficulty in showing that that proportion does not bear with undue weight upon the foreign residents.

The population of the City in 1902, was in round numbers 260,000 of which about 3,200 were foreigners. It was estimated that about one-half say 1,600 of the foreign population resided in or had business connections with the late Settlement. The amount of direct taxes paid by settlement foreigners during the 34th fiscal year was *yen* 130,000 or *yen* 81.25 per head, and not *yen* 175,000 or *yen* 200 per head as stated in the Mémoire.

The settlement ground-rent represents $8\frac{6}{10}$ per centum of all land imposts levied in the Municipality. Residential land is graded for purposes of taxation according to its location or accessibility. No land within the limits of the City is better situated for business purposes than the late Settlement. There are nevertheless several extra-settlement plots of land as large as the Settlement, which pay more per *tsubo* in land taxes and rates than is charged as ground-rent in respect of the settlement land. (Case, pp. 124–129, 148–149 and 153–155.) The topographical conditions in Yokohama are such as to permit a direct comparison between settlement ground-rent and extra-settlement land taxes and rates,[1] which could not be readily made at Hiogo.

The reason why the proportion of house-taxes levied on settlement buildings was so small, is due to the fact that Ward

1. See *infra*, p. 160.

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house-rates are not levied on settlement buildings. (Case, pp. 128–129.)

The income taxes and rates imposed on foreigners in the late Hiogo Settlement for the 34th fiscal year represented 13 per centum of the entire levy, or in other words, one-eighth of the whole amount, and not one-quarter as announced in the Mémoire. The number of persons paying income taxes was 6,834 Japanese having declared incomes amounting in the aggregate to *yen* 8,342,356.90 and 359 foreigners with incomes totalling *yen* 1,251,328.42. The average income of the tax-payers was, therefore, *yen* 1,220 for the Japanese and *yen* 3,486 for the foreigners, and the amount of income taxes stood at *yen* 47.20 for each Japanese and *yen* 116.96 for each foreigner paying the imposts.

As to the business taxes and rates, foreigners in the Settlement at Hiogo, during the same year, contributed 15 per centum of the entire amount paid, but an examination of the principal bases upon which these imposts are assessed, will show that the above proportion was not excessive. 5,980 Japanese in the City and 100 foreigners in the former Settlement of Hiogo paid business taxes, averaging per capita *yen* 70.25 and *yen* 635.73 respectively for the Japanese and foreigners paying the taxes. Of the above persons 3,760 Japanese and 49 foreigners were engaged in trade and effected sales of merchandize to the extent of *yen* 37,299,375.68 and *yen* 37,207,367.28 respectively or *yen* 9,920 per head for the Japanese and *yen* 759,334 per head for the foreigners. 582 Japanese and 35 foreigners were engaged in the business of general agents, attorneys, factors and brokers, and as such re-

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ceived commissions amounting respectively to *yen* 608,000 and *yen* 856,500 being for the Japanese at the rate of *yen* 1,045 and for the foreigners *yen* 24,471 per head. Finally the 5,980 Japanese employed 29,076 persons or an average of nearly 5 each, while the 100 foreigners employed 4,425 or an average of more than 44 each. The greater volume of business done per capita by foreigners when compared with Japanese, owing to their better facilities and greater command of cheap capital, fully accounts for the difference in the rate of business taxes. That difference would have been much more pronounced, if it had not been for the fact that in the matter of transportation, docks, and the like industries, 219 Japanese were employing in Hiogo *yen* 23,571,623 as capital which, comparatively speaking, was rather heavily taxed, while 9 foreigners engaged in the same business in the late Settlement possessed as capital only *yen* 42,007.

The proportion of the foreign trade of Hiogo done by foreigners for the same year, confirms in a very striking manner the contentions of the Japanese Government on the subject of the business taxes:

	By Foreigners.	By Japanese.	Total.
	yen.	*yen.*	*yen.*
Imports . .	79,386.183	46,592,839	125,979,022
Exports . .	57,476,207	19,730,019	77,206,226
Total .	136,862,390	66,322,858	203,185,248

It is estimated that of the above, the share falling to the foreigners in the Settlement was —

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	yen.
Imports	70,574,317
Exports	51,096,348
Total [1].	121,670,665

Before leaving the subject of Hiogo it may be pointed out, that the outlay for the maintenance of the settlement area for the 34th fiscal year was *yen* 12,332,29. (Case, p. 139.) Putting the foreign population of the Settlement at 1,600, the above sum represents an expenditure of *yen* 7.70 per head for the purposes named. For the same services the Hiogo Municipality expended *yen* 129,359.83 or *sen* 50 per head of the population.

Turning next to the observations concerning Yokohama contained in the same foot-note the Japanese Government wish to say that they are not aware of anything in any municipal budget tending to convey the slightest suggestion that the annual municipal expenses of Yokohama including the Bluff are only *yen* 45,000. Such a suggestion would be wholly contrary to the facts. It is shown by the Note from the Governor of Kanagawa to the Senior Consul at Yokohama (Appendix, pp. 350–351), that even in 1871 the ground-rent, although the rate of such rent then stood in terms of the present standard at double the present rate, was not sufficient to cover the cost of up-keep of the Settlement.

In a Memorial of the foreign residents of Yokohama

1. This estimate is based upon the declared sales of settlement and extra-settlement foreigners for the 34th fiscal year. The sales of foreigners residing or doing business in the Settlement amounted to *yen* 37,207,367 (*supra*, pp. 155), while the sales of extra-settlement stood at *yen* 4,636,715. That proportion has been employed in making the above calculation.

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which appears as an Annex to Protocol No. 15 of the Treaty Revision Conference of Tokio of 1882, the cost of policing and maintaining the Yokohama Settlement including the Bluff, was estimated at $ 50,000 per annum. That sum is equal in the present standard to *yen* 92,900.

Finally by reference to page 139 of the Case of Japan, it will be seen that for the 34th fiscal year, there was actually expended for the up-keep or public works of the Settlement and Bluff the sum of *yen* 51,524.40 and turning to page 68 it will be found that at the time the Settlement was merged with the Municipality, the annual expenditure on account of police for the Settlement and Bluff was *yen* 61,292.66, thus making the annual outlay for policing and maintaining the two Quarters, *yen* 112,817.06.

The actual municipal taxes imposed on foreigners residing or doing business in Yokohama or on the Bluff for the 34th fiscal year, exclusive of ground-rent, was *yen* 117,639.93. (Case, pp. 104 and 114.) Adding to the above sum the proportion of the ground-rent which properly appertained to the Local and Municipal treasuries, namely, *yen* 12,548.34 (Case, pp. 104 and 114), and the entire Local and Municipal revenue of the Settlement and Bluff stood at *yen* 130,188.27 or *yen* 17,371.21, not *yen* 140,000 more than the expense of police and up-keep.

The cost of the police is a Local charge and represents about 40 per centum of the ordinary Prefectural expenditure. (Case, pp. 140–141.)

The outlay of the Yokohama Municipality on account of public works or maintenance was, for the same year, 26 per

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centum of the ordinary Municipal expenditure. The cost of the City and Ward Offices represented 21 per centum; education 5½ per centum; sanitation 7¾ per centum; contributions to the Local revenue 25 per centum; services of Municipal loans 6¼ per centum, and miscellaneous 8½ per centum of the ordinary expenditure of the Municipality. To these last six items no less than to the first one, foreigners are under just as much obligation to make due contribution as are Japanese subjects. The reason why the contribution of the Settlement and Bluff towards the general cost of Municipal administration was disproportionately small, was due to the fact that the expenditure for police and up-keep was disproportionately large. The disbursements of the Municipality for up-keep or public works was *yen* 127,107.28, and the population was 300,000. Consequently, the expenditure on that account for the year named stood at *sen* 42 per head. The number of foreign residents of the Settlement and Bluff was 5,789 and the outlay for up-keep or public works of those Quarters was *yen* 51,524.40 or *yen* 8.90 per head.

The actual area of the whole Municipality of Yokohama is *tsubo* 6,956,039 of which, aside from the Settlement and Bluff areas, only *tsubo* 1,314,863 is classed as urban residential land. The total revenue of the Municipality for the 34th fiscal year was *yen* 648,224.44. In the presence of these figures the percentages elaborated at the end of the foot-note under discussion cease to have value.

As an answer to the suggestion contained in foot-note (2) to page 49 of the Mémoire, to the effect that the house-taxes if added to the ground-rent would raise to an exorbitant extent

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the fiscal burdens on the settlement land and buildings, the Japanese Government invite the attention of the Arbitral Tribunal to the following condition of affairs in Yokohama bearing upon the point:

To the west of the Settlement lies a section of the City which is bounded on the north by the harbour; on the south by the Ooka river; on the east by the Settlement and on the west by Benten Canal. (Appendix, Map No. 1.) Within those boundaries there are *tsubo* 111,578 of privately owned residential land. For the 34th fiscal year, that land actually paid in taxes and rates the sum of *yen* 44,658,51, and the buildings standing on the land paid in house taxes and rates *yen* 47,526.72. The Settlement contains *tsubo* 128,459 of residential land paying as ground-rent *yen* 35,935.77. The house-taxes imposed on the settlement buildings for the 34th fiscal year amounted to *yen* 32,599.94. (Case, Table facing p. 143.) In other words the *tsubo* 111,578 of extra-settlement land in question and the buildings thereon, paid to the State *yen* 23,649.52 more for the year named, than did the *tsubo* 128,459 of settlement land and buildings.

Touching the comparison made in the same foot-note between the house-taxes levied in the Hiogo Municipality on the one hand, and the settlement ground-rent and house-taxes added together on the other, the Japanese Government wish to point out that the comparison is defective in this: The ground-rent is not a house-tax. It is purely and simply a charge upon the land and stands in place of land taxes and rates. Accordingly, if on the one side the burdens on land are included, the comparison is without value unless, on the other, those burdens

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are also included. But a still more serious criticism has to be made: The figures employed in the Mémoire, especially those relating to the total amount of the house-taxes imposed in the entire City, are wholly wrong. The house-taxes collected in the Municipality of Hiogo for the fiscal year 1900–1901 amounted in the aggregate to *yen* 193,182.46 and not *yen* 105,970 as stated in the Mémoire. The settlement house-taxes for the same year reached the sum of *yen* 13,666.44 or $\frac{1}{14}$ not $\frac{1}{4}$ of the total amount collected. It has already been seen that for the succeeding fiscal year, 1901–1902, the settlement house-taxes were only $\frac{1}{25}$ of the total levy for the Municipality.[1] The land taxes and rates imposed for the year 1900–1901, in the Hiogo Municipality amounted to *yen* 142,254.42 and the settlement ground-rent to *yen* 12,915.34, the latter being $\frac{1}{11}$ of the former.

There also appears in this foot-note a repetition of the statement to the effect that the imposition of settlement house-taxes would mean double taxation, and it is added that the Japanese Government by substituting ownership in place of leasehold tenure in favour of Japanese subjects acquiring settlement land and by thus preventing the payment of taxes twice over, had acted in an equitable manner toward their subjects. The grounds upon which that assertion rests remain undisclosed, and the Japanese Government are still unable to perceive how house-taxes that are admissible if the land on which the houses stand is subject to taxation, become inadmissible upon the ground that they represent double taxation if the burdens on the land are called ground-rent instead of land-

1. See *supra*, p. 153.

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taxes. But in any event the Japanese Government believe that the following cases, which show in concrete form the actual results of the conversions of leasehold titles into actual ownership, will prove the fallacy of the theory of double taxation. During the 35th fiscal year Lots Nos. 33, 34 and 55 of land in the late Hiogo Settlement, measuring *tsubo* 1,341.64 were acquired by Japanese subjects and the leases in perpetuity were converted into actual ownership. (Case, p. 124.) The land and buildings were for that year subject to the following taxes:

	yen.
Land taxes and rates	734.02
House-taxes	192.06
Total	926.08

If the perpetual leases had continued in force for that year, the fiscal burdens on the land and buildings would have been as follows:

	yen.
Ground-rent	431.39
House-taxes	192.06
Total	623.45

How it can be said that the charge of *yen* 623.45 would have involved double taxation, which does not appear in the imposts of *yen* 926.08, is unexplained and to the Japanese Government it seems inexplicable.

The Japanese Government in closing this part of their Counter-Case, wish to say that any per capita comparison in the matter of the burden of taxation between the general population of the Empire on the one hand, and the foreign

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residents on the other, would be wholly and absolutely misleading. The foreign communities in Japan are essentially business communities, and in all that would contribute to such a comparison, in enterprise and business qualifications, and in wealth and capital and income, and in the volume of their commercial operations, they stand much above the general average of the population of Japan as they would stand above the general average in their own countries, while on the other hand the number of old, infirm and indigent persons in those communities is much below the general average. It would be as unfair and misleading, therefore, to institute the comparison above mentioned, as it would be to make a similar comparison between the foreign residents and the 20 highest Japanese tax-payers who probably contribute more in taxes than all the foreign residents together.

The only point under Argument II of the Mémoire which seems to call for consideration is the question —

> N'existe-t-il pas dans tous les pays, par suite de circonstances géographiques, historiques ou autres, des restrictions soit politiques, soit économiques aux droits souverains de l'État?

That question the Japanese Government naturally answer in the affirmative, but they are compelled to add that it is not usual for States to grant in favour of foreigners special exemption from ordinary taxation, which is denied to their subjects or citizens. Claims to such exceptional extraordinary immunities would be subject to the rule of strict interpretation. If the grants are made in clear and express terms, they stand and good faith demands that they be respected so long as they

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exist, but they require something more than vague and intangible implication to rest upon.

The Japanese Government do not find it necessary to make any detailed critical examination of the consequences which the Powers Complainant are of opinion should flow from an award in their favour in the present Reference, since those consequences with hardly an exception, have no relation to the question upon which the decision of the Arbitral Tribunal is invoked. That question concisely stated is, whether the buildings in the former Settlements standing on the land held under governmental leases in perpetuity are entitled to share in the exemption from taxation and new conditions which is guaranteed to the land by the Revised Treaties. There is here no question of the method of registration to be employed or of what taxes or conditions the land is protected against, but merely whether the buildings participate in the immunities in the matter of taxation and conditions that actually belong to the land. Neither is there here any question of general exemption of the lessees of settlement land from all municipal taxation, but merely whether the immunities enjoyed by their land extend as well to their buildings. None of the questions involved in the consequences enumerated by the Powers Complainant, with the single exception of the house-taxes, have ever been made the subject of discussion between the Parties to the present Reference and it was only the point in actual controversy that was submitted to Arbitration.[1] Not until those other questions have become matters of actual discord and the ordinary processes of di-

1. See *supra*, pp. 1-5.

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plomacy have been exhausted without result, will the Japanese Government be prepared to consider the question of solving the issues by the methods adopted in the present instance. But it may be pointed out that for nearly five years the income tax; the business taxes; the stamp duties, and the municipal taxes referred to under paragraphs III, IV, V and VI of the consequences above mentioned, have been imposed without opposition on the part of the tax-payers beyond the opposition which ordinarily attends the collection of taxes generally and without objection on the part of the Powers Complainant beyond that appearing in the Mémoire.

As to paragraph VIII of those consequences, it seems necessary to repeat that the *Kosuwari* is not a house-tax. (Case, pp. 119–121 and Notes, pp. 16–20.) Regarding paragraph II it should be explained that the Japanese Government did not consider that the fees for registration of legal acts respecting land were excluded by the new Treaties. If those fees had been so excluded, no legislation would have been necessary. The provisions of the Treaties would alone have been sufficient. (Case, pp. 156–157.) It was because the Treaties did not cover the case, that Article III of Law No. 39 of 1901 (Appendix, p. 283) became necessary in order to secure the desired exemption.[1] Concerning paragraph VII the Japanese Government wish in the first place to say that the value of the land is not taken into consideration in determining the taxable units of buildings. Land is graded for the purpose of imposing the Imperial Land Tax. In some cases, as in Tokio (Notes, p. 4), the grades thus established

1. See *supra*, p. 107.

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are used for the purpose of creating one of the factors employed in calculating the taxable units of buildings, while in other cases as in Yokohama (Notes, p. 7), an independent grading of the land is made for the purpose, which has nothing to do with taxable values. Besides it must be remembered that the leased land in the late Settlements, being subject to ground-rent but exempt from land-taxes, is without any taxable value. Finally the Japanese Government desire to draw attention to the fact that the claim as stated under this number can scarcely be regarded as germane to the issue before the Arbitral Tribunal. It is not a claim that the settlement buildings are, by the terms of the Treaties of 1894–1896, entitled to the same exemption from taxation as the land on which they stand. It is on the contrary a claim that, as the classification of the land is an element which is considered in the calculation of taxable units of buildings, the house-taxes are in part at least, land-taxes. In this respect the claim resembles the contention respecting business taxes in paragraph IV above mentioned.

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CONCLUSION.

The Japanese Government have endeavoured in this their Counter-Case to give full and careful consideration to every contention of the Powers Complainant which might be said to have a bearing upon the point at issue, and if, in their endeavours they have exceeded the strict requirements of the case, their excuse must be found in their desire to place before the Arbitral Tribunal every fact, every circumstance likely to assist it in arriving at a decision.

The claim of the Powers Complainant on behalf of their nationals to exemption from the house-taxes in question rests primarily, it seems to the Japanese Government, upon the following fundamental errors:

1. That the fiscal obligations resting on foreigners are partial, not general, and that those obligations, especially in a municipal sense, are fulfilled by contributions towards certain enumerated municipal expenditures.

2. That the imposition of the house-taxes in question would represent an abnormal and exceptional sacrifice of individual rights tending to increase the already existing differential treatment against foreigners, and that in this situation the right to impose those taxes can not in the absence of express treaty grant be presumed.

The contentions of the Japanese Government on the

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other hand, are that the ground-rent paid by foreigners does not exceed the ordinary fiscal burdens resting on the land and that foreigners are under obligations no less binding than those resting on Japanese subjects to contribute their just share, under the revenue laws of the Empire, towards the support of the Government in its various departments and activities. It will be seen by reference to the Notes to the Case of Japan, pages 42-47, what expenditures are borne by the Local Governments and the Cities and Wards. Towards these several items, equally with those falling to the account of the Imperial Government, foreigners residing in Japan and enjoying the equal protection of her laws and administration, are in their persons, property, incomes and occupations, liable to equal taxation with Japanese subjects.

The Japanese Government believe that they have conclusively shown in their Case and this Counter-Case, that exemption from the house-taxes in question would create to the full extent of those taxes, unjust and inequitable differential treatment in favour of the foreign owners of the settlement buildings as compared with Japanese subjects and other foreigners, in disregard of the principle of equal taxation. To establish such a condition of things, to create a favoured class in the matter of taxation, would require a grant so clear and explicit as to be beyond the range of doubt or discussion.

It rests with the Arbitral Tribunal in its wisdom to determine whether in the treaty and complementary engagements recited in the preamble of the Arbitral Protocol, such a grant exists.

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NOTE REGARDING ERRORS FOUND IN THE DOCUMENTS SUBMITTED BY THE POWERS COMPLAINANT AS ANNEXES TO THE MEMOIRE.

Copies and translations of documents submitted by the Powers Complainant as Annexes to their Mémoire have received the careful examination of the Japanese Government; and many errors of minor importance have been discovered especially in the translations of Notes which were exchanged between the Japanese Government on the one hand and the Legations of the three Powers on the other, and in the translations of Japanese laws and ordinances.

In many cases, however, the errors are either immaterial or apparent from the context, or they can at least be easily detected by comparison with the copies or translations of the same original documents produced in the Appendix to the Case of Japan. For obvious reason, therefore, the Japanese Government have deemed it unnecessary to engross the attention of the Arbitral Tribunal with an exhaustive list of such inaccuracies or omissions; but there are some errors of more important character which are not apparent by themselves and might lead to erroneous impressions, if permitted to remain unrectified. The Japanese Government will in these observations restrict themselves to the errors of the latter kind; but in doing so, they deem it their duty to state that in all cases where discrepancy has been found to exist between the copies

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and translations submitted by the Party Complainant and those appended to the Case of Japan, the two different versions have been subjected to a careful comparative examination side by side with the original documents. As a result of such examination the Japanese Government have failed to discover that in any of these cases they were in error, and are therefore compelled to maintain the entire accuracy of the copies and translations submitted by them.

The following is the list of errors calling for observation.

Mémoire, p. 218—Memorandum of the British Minister of December 21, 1899, Section II:

> The words "la preuve principale" and "aura la même valeur à tous égards" are respectively used for the expressions, "primâ facie evidence" and "similar value be given to * * * but not so as to be conclusive for all purposes," appearing in the original. (Appendix, p. 124.)

Mémoire, p. 225—Note of the Minister for Foreign Affairs of December 10, 1900:

> The first sentence of the concluding paragraph of the Note is thus rendered:
>
> > En terminant, je désirerais attirer l'attention de Votre Excellence sur le fait que l'essai du transfert d'un bail perpétuel et des constructions élevées sur la propriété de M. J. R. Brower à M. C. K. M. Martin, citée dans la note de M. Whitehead, *semble être considéré par le Chargé d'Affaires de Sa Majesté comme étant en dehors des limites de l'application* de la dernière clause de l'article I de l'Ordonnance Impériale no. 458.

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The sense of the original, which is in Japanese, is as follows:

> In conclusion I beg to call Your Excellency's attention to the fact that the case of attempted transfer of a lease in perpetuity and buildings erected on the land in question between Mr. T. L. Brower and Mr. C. K. M. Martin, which is referred to in Mr. Whitehead's Note, *does not appear* [to the Minister for Foreign Affairs] *to be one falling within the purview of* the last paragraph of Article I of Imperial Ordinance No. 458. (Appendix, p. 139.)

Mémoire, p. 243—Note of the British Minister of July 3, 1902, concluding paragraph:

Before the concluding paragraph which begins with "Je regrette toutefois" the following, which appears as the penultimate paragraph in the original, is wholly omitted:

> I would also submit that the question at issue submitted by Your Excellency does not follow the lines of the Article in the Treaty which says that no conditions *whatsoever* other than those contained in the existing leases shall be imposed, whereas Your Excellency only mentions "exemption from such municipal and local taxes as are generally imposed in Japan." (Appendix, p. 169.)

Mémoire, p. 267—Note enclosed in the Communication of the French Minister of November 2, 1899:

Before the words "Tout d'abord" appearing on the 15th line of the page, the following sentence contained in the original is omitted:

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> Or le Gouvernement Impérial interprétant d'une manière différente le paragraphe précité dudit traité se dispose à lever des taxes municipales et provinciales établies sur des bases différentes de celles qui sont fixées par les anciens baux à perpétuité. (Appendix, p. 69.)

Mémoire, p. 271—Memorandum of the Minister for Foreign Affairs of December 2, 1899:

> The translation given on the page referred to is not accurate and does not render justice to the original document. More especially the two paragraphs contained between the 22nd and the 31st lines of the page widely deviate from the original. (Appendix, pp. 75–76.)

> Also a statement to the following effect, which precedes the final paragraph in the original, is omitted on the 37th line: (Appendix, p. 76.)

> > It can not be maintained, because of this building condition, that the leases in perpetuity and the rent relate to the buildings as well as to the land itself.

Mémoire, pp. 285–286—Note of the Minister for Foreign Affairs of October 21, 1901:

> The original of the Note above referred to is identical with the Notes addressed to the British and the German Ministers, of which the translations are given respectively on pages 229–231 and 257–259 of the Mémoire. By comparing those three different versions of the identical Notes with the translations submitted by the Japanese Government (Appendix,

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pp. 51–54, 98–101 and 146–148), it will be found that the translations given in the Mémoire of the Notes to the British and the German Ministers are clear and intelligible, and practically accord with the translations appended to the Case of Japan. It is unnecessary to enter into a fuller criticism of the translation given on pages 285–286 of the Mémoire, than to point out that the word "biens" appearing in the fifth paragraph and which is made the subject of a comment in the foot-note on page 36, is not used in any of the other translations, and that there is an apparent omission of the words "aussi bien qu' immobilière" after the word "mobilière" in the first line of page 286.

Mémoire, p. 300—Imperial Ordinance No. 179 of September 20, 1901:[1]

The words "un droit de la propriété du terrain" in the 3rd line of the page should be replaced by the words "un droit *ayant pour objet* la propriété du terrain." (Appendix, p. 288.)

Mémoire, p. 312—Law No. 16 of April 8, 1880:

With reference to the first item of Local Taxes prescribed in Article I of this Law, it should be observed that Local Land-tax is not limited to $\frac{1}{3}$ of the Imperial Land-tax. See Notes, p. 21 note.

1. The day of promulgation is the 20th, although published in the Official Gazette of the 21st September.

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Mémoire, pp. 312–313—Law No. 1 of April 17, 1888:

With reference to item 3 of Article CXXII see Notes, p. 40.

Mémoire, p. 313—Law No. 64 of March 15, 1899:

The year 1889 given as the year of promulgation is an error for 1899. It is entitled *Fu Ken Sei* (Law of Local Government). See Notes, pp. 11, 22 and 37–38.

Mémoire, p. 314—Imperial Ordinance No. 316 of June 28, 1899:

The word *Kaoku-Zei*, wherever it occurs in the body of this Ordinance, is rendered "impôt immobilier." The use of this expression as an equivalent for *house-tax* is objectionable, because it obscures the nature and the incidence of the tax in question, on which utmost clearness is desirable for the purposes of the present Arbitration. In a Note which the French *Chargé d'Affaires* addressed to the Minister for Foreign Affairs accepting under instruction the proposal of the Japanese Government to submit the question of the house-tax to arbitration, he used the expression *la tax sur les maisons*. (Appendix, p. 103.) It would have been more appropriate if the same or similar expression had been used in the Mémoire, for the French equivalents for *Kaoku* and *Zei* are respectively *maisons* or *bâtiments* and *taxe* or *impôt*.

Mémoire, p. 316—"Règlement Municipal pour Kobé":

The same objection which has been made regarding

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the use of the expression *impôt immobilier* on page 314, applies as well to the expressions *impôt immobilier* and *impôt immobilier* (*sur les bâtiments*) appearing on the 5th, the 15th and the 16th lines of the page above referred to. In all these cases, the word used in the original is *Kaoku-Zei*, which might be rendered *la taxe sur les maisons* or *l'impôt sur les bâtiments*. In the estimation of the Japanese Government there is no justification in translating the word in question as *impôt immobilier*.

Mémoire, p. 318—"Décision du Conseil Municipale de Nagasaki du 29 Mars 1902."

The expression *de la valeur du terrain* used in the 8th line of the page is inexact. It refers to the *assessed value of residential land*. (See Notes, p. 20.)

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APPENDIX

TO THE

COUNTER-CASE

OF THE

IMPERIAL JAPANESE GOVERNMENT.

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APPENDIX TO THE COUNTER-CASE OF JAPAN.

ADDITIONAL DIPLOMATIC CORRESPONDENCE.

NOTE OF THE FRENCH MINISTER OF JANUARY 8, 1901, ADDRESSED TO THE MINISTER FOR FOREIGN AFFAIRS.

Légation de la République Française
au Japon.
Tokio, le 8 janvier 1901.

Depuis le 31 Décembre 1900, jour où j'ai eu l'honneur d'adresser à Votre Excellence ma dernière communication au sujet de la question des baux perpétuels, j'ai reçu à nouveau de mon Gouvernement des instructions écrites qui complètent et précisent les vues du Département des Affaires Etrangères sur les différences d'opinion soulevées par l'article XXI du Traité de commerce et d'amitié du 4 août 1896 entre la France et le Japon.

Il me paraît utile de communiquer à Votre Excellence la substance desdites instructions sous forme de note.

(Signé) J. HARMAND.

(Inclosure.)

NOTE.

Le 8 Janvier 1901.

Le Gouvernement de la République considère que la solution que le Gouvernement Japonais voudrait faire prévaloir, en ce qui concerne les baux perpétuels, et qui consiste à les transformer en

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contrats de superficie, n'est pas conforme à l'interprétation que comporte l'article XXI du Traité du 4 août 1896. Le Gouvernement Français a déjà fait connaître au Gouvernement Impérial que les baux perpétuels des anciennes concessions étrangères constituent un droit d'une nature très particulière et qui ne peut être identifié avec aucun autre droit défini et régi par les lois Japonaises. A en changer, ne serait-ce que l'appellation, on risquerait d'en modifier la substance même, et, au surplus, ce changement serait sans intérêt pour l'administration Japonaise s'il ne devait avoir cette conséquence.

Le Gouvernement Impérial s'étant engagé à respecter les droits de bail perpétuel existant au moment de la suppression des concessions étrangères, il en résulte que ces droits doivent être confirmés tels que, sous leur nom, et purement et simplement. Le Gouvernement de la République s'élève également contre la prétention du Gouvernement Impérial de faire compter dans l'assiette de l'impôt sur le revenu la partie de revenu produit par les baux perpétuels, prétention combattue déjà antérieurement par nos ressortissants Français de Yokohama. En effet, la stipulation de l'article XXI est à la fois large et parfaitement claire: elle dispose que "les propriétés de cette nature ne *donneront lieu* à aucuns impôts, taxes, charges, contributions ou conditions quelconques autres que ceux expressément stipulés dans les baux en question."

La rédaction de cette clause du Traité indique, dès lors, que non seulement aucun impôt nouveau ne peut être établi sur les propriétés dont il s'agit, mais aussi qu'aucune charge autre que celles fixées par le bail ne peut être subie par le locataire perpétuel du fait de leurs détentions. Elle exclut, en conséquence, l'impôt sur le revenu frappant la partie du revenu produit par ledit bail perpétuel.

Pour copie conforme de la Lettre et de la Note ci-dessus:

Le Ministre de France,
(Signé) J. HARMAND.

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NOTE OF THE DUTCH MINISTER OF NOVEMBER 8, 1901, ADDRESSED TO THE MINISTER FOR FOREIGN AFFAIRS.

No. 463.

Tokio, le 8 Novembre 1901.

Monsieur le Ministre,

J'ai l'honneur d'accuser réception à Votre Excellence de Sa lettre du 21 Octobre dern.: No. 17 par laquelle Elle a bien voulu se référer à la loi, insérée à la Gazette Officielle du 21 Septembre dern., confirmant les baux perpétuels accordés aux étrangers.

Votre Excellence me fait en même temps remarquer que la dite loi n'a pas pour effet d'exempter les constructions établies sur les terrains occupés par les étrangers en vertu de baux perpétuels, des impôts et des taxes d'enregistrement qui sont exigibles par rapport à d'autres constructions.

Vous voudrez bien me permettre, Monsieur le Ministre, de ne pas partager cette manière de voir, laquelle, d'après mon opinion, ne concorderait pas avec l'esprit des traités en rapport avec l'historique des baux perpétuels.

Lorsque les terrains en question furent mis en adjudication et que les rentes pour les baux perpéuels furent fixées, ces rentes étaient très élevées à cette époque-là et bien supérieures aux impôts prélevés sur les autres terrains de même nature. Les dites rentes avaient donc incontestablement pour but d'exempter tant les terrains que les constructions, —que les acquéreurs étaient au reste obligés d'y construire, —de toutes espèces d'impôts présents et futurs. Or, les nouveaux traités ont simplement tenu à confirmer les droits acquis.

Par conséquent il a été stipulé que les baux perpétuels seraient confirmés et que l'exemption de tout impôt en ce qui concerne ces propriétés serait maintenue. Or, l'exemption d'imôts acquise se rapporte évidemment tant aux terrains occupés en vertu de baux perpétuels qu'aux constructions établies sur ces terrains.

En soumettant ces considérations à la bienveillante attention du Gouvernement Impérial, je saisis cette occasion, pour vous réitérer,

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Monsieur le Ministre, les assurances de ma très haute considération.

(Signé) H. TESTA.

Son Excellence
Monsieur KOMURA JUTARO,
Ministre des Affaires Etrangères,
Tokio.

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PAPERS AND DOCUMENTS SHOWING THE LEGAL DISTINCTION BETWEEN LAND AND BUILDINGS.

DECLARATION OF PROFESSOR TOMII ON THE DISTINCTION BETWEEN LAND AND BUILDINGS AS A FUNDAMENTAL PRINCIPLE OF THE LAW OF PROPERTY IN JAPAN.

Je soussigné, Massa-akira Tomii, sujet japonais, *Hôgakuhakushi*,[1] Docteur en droit et lauréat de la Faculté de Droit de Lyon, ancien Doyen et Professeur de Droit Civil à la Faculté de Droit de Tokio, Professeur honoraire à l'Université Impériale de Tokio, ancien membre-rédacteur de la Commission de la Codification, membre de la Chambre des Pairs, fais, en sûreté de conscience, la déclaration suivante:

1. En qualité de membre-rédacteur de la Commission de la Codification, je me suis, de 1893 à 1897, particulièrement occupé de la rédaction de l'avant-projet du nouveau Code Civil de l'Empire ; et, à cette occasion, j'ai fait l'étude aussi approfondie que possible de nos anciennes lois et coutumes concernant le régime foncier ;

2. D'après nos vieilles coutumes, consacrées par plusieurs lois promulguées depuis la Restauration, les constructions n'étaient jamais considérées comme faisant partie des terrains sur lesquels elles étaient élevées, ni comme des accessoires de ces terrains ;

3. La distinction absolue qui existe, dans la législation actuelle de l'Empire, entre les terrains et les constructions qu'ils supportent, loin d'être une innovation, n'est, en définitive, qu'une simple consécration de la tradition plusieurs fois séculaire de notre pays ;

4. Il s'ensuit que, dans la législation actuelle, comme sous l'ancien régime, les terrains et les constructions qui s'y trouvent

1. *Hôgakuhakushi* is an academic title conferred by the Japanese Government. It corresponds to *Doctorat en droit* in France.

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peuvent, séparément, être aliénés ou grevés de droits réels, et que les actes de disposition portant sur les uns n'ont, par eux-mêmes, aucun effet sur le sort des autres.

(Signé) M. Tomii.

Tokio, le 6 Avril 1904.

DEED OF YOKOHAMA LODGE OF FREEMASONS FOR THE SURRENDER OF LOT NO. 170 SETTLEMENT AND THE SALE OF BUILDINGS STANDING THEREON TO THE JAPANESE GOVERNMENT.

Re-transfer of Property.

Lot No. 170 in the foreign Settlement, Yokohama, Kanagawa-Ken, as per annexed plan, containing a large stone building about 105 *tsubos*, more or less, and out-buildings covering about 12 *tsubos*, more or less, together with all fixtures or fittings as they now stand, now held by and in the name of the Yokohama Lodge of Freemasons.

As, acting on behalf of the above-mentioned Yokohama Lodge of Freemasons, I am about to sell the before-mentioned buildings as they now stand, to the *Teishinsho*[1]—for the use of your office—for the sum of Three Thousand Five Hundred Yen, Japanese silver currency, I shall return the ground contained in the above-named Lot 170 to the Japanese Government, and shall not claim or require any further compensation beyond the sum herein mentioned.

I further guarantee that, after I have been paid the above-named sum of Three Thousand Five Hundred Yen, I shall hold myself responsible that no further difficulties in respect thereof shall trouble your office.

(Signed) O. Keil.

Yokohama, 30th May, 1894.

Countersigned: Wm. H. Stone,
D. G. M.

Seal of the District Grand Lodge of Freemasons

1. Department of Communications.

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To
The Director
Tokio Telephone-Exchange-Office.

Letter of the Master of the Yokohama Lodge of Freemasons surrendering the Title-deed for Lot No. 170 Settlement.

Yokohama Lodge No. 1092 E. C.
Yokohama, 9th June, 1894.

Your Excellency,

I have the honour to inform you that Lot No. 170, Foreign Concession Yokohama, has ceased to be used for the purpose for which it was granted to the Yokohama Lodge, and, in accordance with the conditions of the grant, I now beg to surrender herewith the Title-deed for the same.

I have the honour to be,
Your Excellency's most obedient servant,
(Signed) W. BARRIE,
Master Yokohama Lodge No. 1092 E. C.

His Excellency
NAKANO TAKEAKIRA,
Governor of Kanagawa-Ken.

CONTRACT EXECUTED BETWEEN THE DIRECTOR OF POSTS AND TELEGRAPHS AND THE SWISS CONSUL GENERAL AT YOKOHAMA FOR THE SURRENDER OF LOT NO. 169 SETTLEMENT AND THE SALE OF BUILDINGS STANDING THEREON TO THE JAPANESE GOVERNMENT.

DEED.

Concerning the purchase of buildings, etc. of the Swiss Consulate General on Lot No. 169 Foreign Settlement, Yokohama, Dr.

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Paul Ritter, Swiss Consul General on one part and Kazuyoshi Yagiu, Director of Posts and Telegraphs, Yokohama, on the other part, have concluded this contract under the following terms:—

1st. The buildings, trees, etc. on Lot No. 169 Foreign Settlement Yokohama, occupied by the Swiss Consulate General shall be sold by Dr. Paul Ritter, Swiss Consul General, to Kazuyoshi Yagiu, Director of Posts and Telegraphs, Yokohama, in their present condition as described in the accompanied list, and the lot shall be returned to the Japanese Government through a proper process with a view to be used by the Department of Communications.

2nd. For the compensation of the conveyance of the above, Kazuyoshi Yagiu, Director of Posts and Telegraphs, Yokohama, shall pay to Dr. Paul Ritter, Swiss Consul General, the sum of Yen 40,000 (Forty-Thousand Yen).

3rd. The above-named amount shall be handed over to Dr. Paul Ritter, Swiss Consul General, when all rights and interests referring to the said lot, buildings, etc. shall be entirely conveyed to Kazuyoshi Yagiu, Director of Posts and Telegraphs, Yokohama.

4th. The removal of the Swiss Consulate General from the lot shall be effected before the 20th December of this year (1898) at the convenience of the Swiss Consulate General, and the said Consulate General shall inform the said removal to Kazuyoshi Yagiu, Director of Posts and Telegraphs, Yokohama, at least three days before the removal.

This deed shall be made out in duplicate and each party shall hold one copy duly signed.

(Signed) KAZUYOSHI YAGIU,
Director of Posts and Telegraphs,
Yokohama.

(Signed) Dr. PAUL RITTER,
Swiss Consul General.

30th day of 9th month of 31st year of Meiji.
(September 30, 1898)

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List of the Buildings, etc. on Swiss Consular lot.

Two-storied wooden main building tile roofed.	59 Tsubo 1 Go 8 Shaku 9 Sai.
One-storied wooden main building tile roofed.	11 Tsubo 5 Go 7 Shaku 2 Sai.
Attached one-storied brick building.	5 Tsubo 9 Go 3 Shaku 1 Sai.
Attached one-storied wooden building tile roofed.	47 Tsubo 7 Go 2 Shaku 4 Sai.
Stone walls and two gates.	39 Ken 1 Bu 6 Rin.
One well.	
One drying stand.	

DEED OF TRANSFER OF LOT NO. 38 AND BUILDINGS THEREON, PROPERTY OF THE KOBE MUNICIPAL COUNCIL, TO THE OSAKA CATHOLIC MISSION.[1]

Du vingt-trois Juillet mil huit cent quatre-vingt-dix-sept, à dix heures du matin,

Pardevant nous, P. de Lucy-Fossarieu, Consul, chargé du Vice-Consulat de France à Kobé et Osaka, et en présence des sieurs Jubiot (Edouard), Agent de la Compagnie des Messageries Maritimes, et Pitteri (Henri), négociant, tous deux Français, majeurs, domiciliés à Kobé et immatriculés en ce Vice-Consulat, témoins instrumentaires à ce requis,

Ont comparu:

D'une part les sieurs Reynell (Harold Essex), négociant, sujet Anglais, Thornicraft (Thomas), docteur en médecine, sujet Anglais, et Oestmann (Anton), négociant, sujet Allemand, constituant le Comité des travaux du Conseil Municipal de la Concession Etrangère de Kobé (Japon), agissant conjointement au nom et pour le compte du Conseil Municipal de la Concession Etrangère de Kobé

1. Reproduced from a certified copy supplied to the Governor of Hiogo-Ken upon his request by the French Consul at Kobe in January 1904.

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en vertu d'une délibération dudit Conseil en date du onze Juin de la présente année, ladite délibération dûment enregistrée à sa date dans le registre des procès-verbaux des séances du Conseil, par lesquels domicile est élu, pour tout ce qui concerne l'exécution du présent acte, au siége du Conseil;—à savoir, au Numéro trente-huit de la Concession Etrangère de Kobé;

et, d'autre part, le sieur Fage (Pierre), missionaire apostolique, citoyen français, Procureur de la Mission Catholique d'Osaka, et agissant en cette qualité, au nom et pour le compte de ladite Mission, domicilié à Kobé, Numéro trente-sept de la Concession Etrangère.

Lesquels sont convenus de ce qui suit:

Le Conseil Municipal de la Concession Etrangère de Kobé (Japon), représenté par les comparants de la première part, vend par les présentes à la Mission Catholique d'Osaka, représentée par le comparant de la seconde part, qui accepte, les droits et immeubles dont la désignation suit.

DÉSIGNATION.

1. Les droits de possession d'un *terrain* sis sur la Concession Etrangère de Kobé, ledit terrain numéroté et désigné sur le plan officiel de ladite Concession comme le *lot Numéro trente-huit* (38), d'une contenance de trois cent cinquante-sept *tsubo* sept-neuvièmes ($357\ \frac{7}{9}$);

2. L'ensemble des *constructions élevées* sur ledit terrain et qui se composent de:

a) Un bâtiment composé d'un rez-de-chaussée et d'un étage, le rez-de-chaussée construit en briques avec charpente en bois, revêtu de tuiles extérieurement, le premier étage construit en tuiles et plâtre avec charpente en bois, cheminées en briques et toit en tuiles, ledit bâtiment servant d'édifice municipal, de bureaux, de station de Police et de résidence pour le superintendant, plus une annexe en briques avec charpente en bois, les briques revêtues extérieurement de tuiles, servant de cuisine et de logement de domestique;

b) Un bâtiment entièrement séparé, composé d'un rez-de-chaussée et d'un étage, construit en tuiles et ciment avec

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charpente en bois, toit en tuiles et cheminées en briques, servant actuellement de logement pour les agents de police et les domestiques;

c) Un bâtiment entièrement séparé, de la même construction que le précédent, servant actuellement de dépôt pour les pompes à incendies et de poste pour les pompiers, composé d'un rez-de-chaussée et d'un étage;

d) Un bâtiment à un seul étage, de la même construction que les deux précédents servant actuellement de remise pour les tonneaux d'arrosage;

e) Un bâtiment à un seul étage construit en briques avec toit de tuiles, servant actuellement de prison municipale.

ETABLISSEMENT DE PROPRIÉTÉ.

Les sieurs Reynell, Thornicraft et Oestmann ont déclaré être le Conseil Municipal de la Concession Etrangère de Kobé, propriétaire des droits de possession du lot de terrain ci-dessus désigné, en vertu d'un bail perpétuel émis le premier Juin mil huit cent soixante-neuf, par Nakashima Sakutaro, Vice-Gouverneur de Hiogo, agissant au nom du Gouvernement Japonais, au nom dudit Conseil Municipal et de ses successeurs ou ayants-droit, moyennant une somme de deux mille huit cent quatre-vingt *bous* douze centièmes (*bous* $2{,}880\frac{12}{100}$), ladite somme ayant été régulièrement acquittée au moyen des fonds municipaux dont ledit Conseil avait la libre disposition en vertu de l'arrangement du 7 Août 1868, et être, en outre, le Conseil Municipal propriétaire des immeubles susdésignés pour lesdits immeubles avoir été construits par le Conseil avec les mêmes fonds municipaux.

Ont, en outre, déclaré les sieurs Reynell, Thornicraft et Oestmann que ledit terrain et lesdits immeubles sont libres de toute hypothèque.

PRIX.

La présente vente est faite moyennant le prix de trente-deux mille *yen* ($32,000) d'argent Japonais, que le Sieur Fage promet de payer aux Sieurs Reynell, Thornicraft et Oestmann en leur qualité de représentants du Conseil Municipal, contre la remise qui lui sera faite du *bail perpétuel constituant le titre de possession du terrain*,

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après que le transfert dudit titre au nom de la Mission Catholique d'Osaka aura été enregistré dans tous les Consulats étrangers de Kobé et à la Préfecture du Ken de Hiogo.

Charges et Conditions.

La présente vente est faite aux charges et conditions ci-après, que les parties, chacune en ce qui les concerne, promettent d'exécuter et accomplir:

1) Le Conseil Municipal de la Concession Etrangère de Kobé conservera aussi parfaitement que par le passé la jouissance et l'usage du *terrain* et des *constructions* compris dans la présente vente, aussi longtemps que ledit Conseil Municipal continuera d'exister dans les conditions établies par l'arrangement susvisé du 7 Août 1868, et sans que la Mission Catholique d'Osaka puisse s'immiscer dans les actes dudit Conseil ou revendiquer la remise du *terrain* ou des *immeubles* avant l'expiration des pouvoirs du Conseil;

2) A titre de compensation, le Conseil Municipal paiera à la Mission Catholique d'Osaka, à partir du jour du versement du prix de vente, et pendant tout le temps qu'il conservera la jouissance et l'usage du *terrain* et des *immeubles*, un loyer annuel calculé à raison de six pour cent sur le prix de vente, soit mil neuf cent vingt *yen* ($1,920) d'argent Japonais, ce loyer payable mensuellement à mois échu;

3) Le Conseil Municipal continuera à payer la *taxe foncière incombant au terrain* pendant toute la durée de la location;

4) Le Conseil Municipal prendra à sa charge, pendant la durée de la location, l'entretien et les réparations tant intérieures qu'extérieures des immeubles compris dans la vente;

5) Le Conseil Municipal s'engage à tenir les immeubles compris dans la vente assurés contre l'incendie pour une somme totale de vingt-deux mille *yen* ($22,000) d'argent Japonais;—à savoir, l'immeuble désigné sous la lettre a) au paragraphe 2 de la rubrique "Désignation" ci-dessus, pour une somme de quinze mille *yen* ($15,000); l'immeuble b) pour une somme de mille *yen* ($1,000); l'immeuble c) pour

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une somme de deux mille cinq cents *yen* ($2,500), l'immeuble d) pour une somme de cinq cents *yen* ($500); l'immeuble e) pour une somme de trois mille *yen* ($3,000), et à payer les primes desdites assurances pendant la durée de la location. Au cas où, dans l'intervalle, tout ou partie des immeubles viendraient à être détruits ou endommagés par un incendie, la Mission Catholique d'Osaka serait immédiatement et de plein droit substituée à tous les droits conférés au Conseil Municipal par la police ou les polices d'assurance, et la Mission devrait, sur les fonds qui lui seraient versés par la Compagnie ou les Compagnies, subvenir aux dépenses de reconstruction ou de réparation de l'immeuble ou des immeubles détruits ou endommagés, sauf entente spéciale à intervenir entre elle et le Conseil Municipal immédiatement après le sinistre.

A défaut de cette entente spéciale, les règles ci-après seront observées pour la reconstruction ou les réparations:

a) Le Conseil Municipal se chargera d'arrêter les plans et devis et de surveiller les travaux de reconstruction ou de réparation;

b) Le Conseil Municipal devra faire réparer ou réédifier l'immeuble ou les immeubles détruits ou endommagés de telle façon qu'ils soient, une fois reconstruits ou restaurés, identiques comme aspect, dimensions, aménagements et matériaux aux immeubles tels qu'ils existent au jour de la vente, sauf entente spéciale à intervenir avec la Mission Catholique, qui se réserverait alors d'approuver préalablement les plans nouveaux;

c) La Mission Catholique ne pourra être, en aucun cas, tenue de payer, pour la reconstruction ou les réparations une somme supérieure à celle qu'elle aura reçue de la Compagnie ou des Compagnies d'assurance, et si les dépenses encourues pour la reconstruction ou la restauration dans les conditions spécifiées au paragraphe b) ci-dessus dépassent cette somme, l'excédent devra rester à la charge du Conseil Municipal qui, à l'expiration de la location, n'aura aucun droit à réclamer une compensation pour cet excédent;

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6) Le Conseil Municipal se réserve d'apporter à tout ou partie des immeubles compris dans la vente telles modifications que nécessiterait l'intérêt des services publics dont il est chargé, pourvu que ces modifications ne diminuent pas la valeur des immeubles. Les constructions entièrement nouvelles qui pourraient être élevées par le Conseil Municipal et à ses frais sur le terrain vendu pendant la durée de la location ne seront pas considerées comme comprises dans la vente. Si, à l'expiration de la location, la Mission Catholique désire les acquérir, elle aura le droit de le faire par préférence moyennant un prix équitable: dans le cas contraire, elles devraient être enlevées par le Conseil Municipal;

7) Il est bien entendu que les dispositions contenues à l'article 5 ci-dessus des charges et conditions ne s'appliquent qu'aux dommages causés par l'incendie: en cas de destruction totale ou partielle de tout ou partie des immeubles par toute autre cause, la Mission Catholique d'Osaka ne serait pas tenue d'entreprendre les restaurations. De même, il est bien entendu que l'obligation imposée au Conseil Municipal de la Concession Etrangère de Kobé par l'article 4 ci-dessus des charges et conditions ne s'applique qu'aux réparations locatives et d'entretien ordinaires. En cas de destruction totale de tout ou partie des immeubles par tremblement de terre, typhon, inondation ou tout autre accident de force majeure, le Conseil Municipal ne serait pas tenu d'entreprendre les restaurations, et, en cas de dommages provenant des mêmes causes, il ne pourrait être tenu de procéder aux réparations que jusqu'à concurrence d'une valeur égale, au maximum, à dix pour cent de la valeur des immeubles suivant l'estimation qui en a été faite plus haut.

Entrée en Jouissance.

La Mission Catholique d'Osaka entrera en jouissance pleine et entière *du terrain et des immeubles* compris dans la vente dans la huitaine franche du jour où le Conseil Municipal de la Concession Etrangère de Kobé aura cessé d'exister dans les conditions de l'arrangement susvisé du 7 Août 1868, pour en user et disposer en

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toute propriété, les prenant en l'état où ils se trouveront, avec les servitudes tant actives que passives qui peuvent en dépendre ou les grever, et à partir du jour où remise *du terrain et des immeubles* lui aura été faite, *la Mission Catholique d'Osaka prendra à sa charge toutes les taxes et impositions foncières ou autres qui s'y réfèrent.*

Dont acte fait et passé à Kobé, en la Chancellerie de ce Vice-Consulat de France, et ont signé les comparants ainsi que les témoins, avec Nous, Consul susqualifié, après lecture, les jour, mois et an que dessus.

(Signé) THOMAS CHARLES THORNICRAFT,
Vice-Président du Conseil Municipal.

(„) H. E. REYNELL,
Member of the Municipal Council.

(„) A. OESTMANN,
Member of the Municipal Council.

(„) P. FAGE,
Miss. Apost., Procureur de la Mission Catholique.

(„) E. JUBIOT.

(„) H. PITTERI.

Vu et approuvé,

(Signé) V. KRENCKI,
Président du Conseil Municipal de la Concession Etrangère de Kobé.

(„) P. DE LUCY-FOSSARIEU,
le Consul, chargé du Vice-Consulat de France.

Pour copie certifiée conforme, à Kobé, le 19 Janvier 1901.

(Signé) P. DE LUCY-FOSSARIEU,
le Consul de France, chargé du Vice-Consulat.

Note:—Italics do not appear in the original, but are used here for the purpose of marking the passages to which attention is invited.

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PAPERS IN THE CASE OF GOVERNOR OF NAGASAKI *VERSUS* C. F. CALDER TRIED BEFORE THE BRITISH CONSULAR COURT IN 1885.[1]

Petition of the Plaintiff.

1885.

IN HER BRITANNIC MAJESTY'S COURT AT NAGASAKI.

Civil
No. 4.

The 23rd day of November, 1885.

Seal of Her Britannic Majesty's Court Nagasaki

Let this be served on the Defendant C. F. Calder for his answer within six days.
H. M's Court at Nagasaki.
November 23rd, 1885.

Between

NAKAWO MASAHISA,
8th Rank, Nagasaki Ken
Land Agent,
Acting for and on behalf of
ISHIDA YEIKICHI, Prefect of
Nagasaki. — Plaintiff

and

C. F. CALDER,
Lessee of Lot No. 19 A Naminohira, Nagasaki. — Defendant

To JAMES JOSEPH ENSLIE, Esquire,
Judge of Her Majesty's Court at Nagasaki.

I certify to have served a true Copy of the within on the within C. F. Calder personally at 11.35 A. M. 26th November, 1885.
(Signed) S. F. LAWRENCE.

The Petition of NAKAWO MASAHISA the above-named Plaintiff shews as follows:—

1st. That the Defendant on the 1st of July, 1869, leased from the Prefect of Nagasaki-Ken, as shown in the Title-deeds issued, a lot of land in the foreign Settlement at Nagasaki containing 473 *tsubo* and known as No. 19 A Naminohira.

2nd. That the Defendant has always been and still is lessee of the said lot of land.

1. Papers here reproduced are taken from copies of documents in the case, furnished to the Governor of Nagasaki-Ken in compliance with his request by the British Consul in April 1904.

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3rd. That the annual rent payable in advance is fifty-six dollars and seventy-six cents.

4th. That there is now due and payable the sum of forty-two dollars and fifty-seven cents, being the amount of rent due from July, 1885, up to the 31st of March, 1886.

The Plaintiff therefore prays:—

1st. That the Defendant may be ordered to pay to the Plaintiff the said sum of forty-two dollars and fifty-seven cents or such other sum as to this Honourable Court may seem just, together with interest thereon at the rate of ten per cent. per annum, and the costs of this suit.

2nd. That the Plaintiff may have such further or other relief as the nature of the case may require; and as is fully set forth in the conditions recited and contained in the Deed of Title for Lot No. 19 A aforesaid issued by the Imperial Japanese Government on the 1st day of July, 1869.

The Defendant to this Petition is
C. F. CALDER,
Lessee of Lot 19 A
Naminohira, Nagasaki.

Signed in Japanese by Nakawo Masahisa, a clerk of Nagasaki-Ken, acting on behalf of Ishida Eikichi, Governor of Nagasaki-Ken.
Plaintiff.

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Record of the Hearing and Judgment.

Civil
No. 4.

Thursday, December 17, 1885.
Before J. J. ENSLIE, Esqre., Judge.

NAKAWO MASAHISA,
for and on behalf of Prefect of Nagasaki,
v.
C. F. CALDER.
Land Rent
$ 42.57

Plt. appears in person.

Defendant does not appear.

S. F. LAWRENCE sworn. I served the Petition on Def't. on the 26 of Novr. last. I also served a notice of hearing on Def't. on 8th. of Decr. present.

NAKAWO MASAHISA cautioned. I claim overdue land-rent amounting to $ 42.57 on Lot 19 A Naminohira leased to Def't. I produce Title-deed and call attention to the clause therein appearing, to the effect that, on failure to pay annual rent in advance, the deed shall be declared null and void. The amount of rent is due for the period from July 1, 1885, to 31 March, 1886.

For Plt. in the full amount claimed, to be paid forthwith. Def't. to pay costs of Court. Title-deed declared null and void.

(Signed) J. J. ENSLIE.
Consul and Judge.

L. S.

Order for Execution of Judgment.

Civil
No. 4.

Tuesday, December 22, 1885.
Before J. J. ENSLIE, Esqre., Judge.

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NAKAWO MASAHISA,
for and on behalf of Prefect of Nagasaki,
v.
C. F. CALDER.

Plt. applies for execution on the judgment in this cause.
Proof adduced that judgment is still unsatisfied.

ORDER

Let execution issue upon the buildings situate on Lot 19A Naminohira, and let the said buildings be sold by public auction on Tuesday, the 29th instant, at 10 A. M., and let the proceeds of said public auction be paid into Court, thereout paying the amount due under the judgment after first paying all the costs in this suit and execution.

(Signed) J. J. ENSLIE.
Consul and Judge.

L. S.

Account of the Sale in Execution of the Judgment.

Account Sales of Buildings on Lot No. 19A Naminohira Hill; sold by public auction by the undersigned: By Order of H. B. M's Court, and on account and risk of concerned, on the premises. Tuesday, 29th December, '85.[1]

One Bungalow	Four rooms.		
One house	Four rooms.		
One house	Three rooms and Outhouses.		
Sold for dollars		$275.00	
Less Charges			
Advertising in Nagasaki Paper ..		2.00	
,, Post Card		2.00	
2½ % Com. on 275.00		6.87½ ..	10.87½
			264.12½

1. This is the title appearing in the original document.

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E. & O. E.

(Signed) R. H. Powers & Co.
Auctioneers.

Nagasaki, December 29th, 1885.

(Pencil Note) Less Court fees			27.00
			237.12½
Less ground-rent			42.57
			$ 194.55½
Less Transfer		5.00	
Cancelment ..		5.00 ..	10.00
			184.55½

CANCELLATION OF LEASES IN PERPETUITY IN RESPECT OF LOTS NOS. 40A AND 41, SAGARIMATSU, NAGASAKI.

The ground-rent for the half year commencing April 1, 1894, payable in respect of Lots Nos. 40A and 41, Sagarimatsu, and another lot [1] outside the foreign Settlement in Nagasaki, all of which were held under governmental leases in perpetuity by George W. Lake, a citizen of the United States, standing unpaid on July 24th of that year, the Governor of Nagasaki officially requested the United States Consul at that port to cause the same to be paid not later than the 31st of that month. In making that request he referred to Article VI of the Land Regulations of 1860, according to which rent was payable in advance, and coupled with it a further request that, in the event the rent in arrears should still be unpaid on the date named, the title-deeds in respect of the lots in question should be cancelled and the land handed over to the Governor's Office together with the buildings standing thereon.

Under date of August 7, 1894, the United States Consul acknowledged the receipt of the Governor's Note of July 24th and stated that he was ready to declare the title-deeds null and void, and that he would authorize the sale at public auction of buildings stand-

1. A lot which was commonly known at the time as "Ship Building Yard A, Kozone."

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ing on the lots in question upon condition that the proceeds, after deducting the expenses of sale, etc., incurred by the Governor and the rent in arrears, were to be handed over to the Consul for the benefit of George W. Lake or his creditors. This was agreed to by the Governor in a Note dated August 31st, and on September 10th the Consul transmitted to him the Consular copies of the title-deeds for the three lots named with an endorsement to the effect that they were "declared null and void on account of failure to pay the ground-rent."

On the 18th of September the same Consul forwarded to the Governor an application of Edward Lake, a brother of George W. Lake, for a lease of the lots thus vacated. Together with this application the rent in arrears in respect of the lots in question as well as the rent in advance for the further period of six months, from October 1, 1894 to March 31, 1895, was transmitted to the Governor by the Consul in behalf of the applicant. The intended sale of the buildings standing on those lots was thus rendered unnecessary, and new title-deeds in the usual form bearing date of October 1, 1894, were issued by the Governor granting the right of perpetual lease in respect of those lots to Edward Lake, his heirs, executors and assignees.

SPECIMENS OF DECLARATIONS RELATING TO BUILDINGS RECORDED IN THE REGISTRY BOOK OF THE FRENCH CONSULATE AT YOKOHAMA UNDER THE REGIME OF CONSULAR JURISDICTION.[1]

Lot No. 164 A.

Transcription de constructions de maisons sur le lot No. 164 A.

Paul Dourille.

Par devant nous, Paul Louis Raoult Deslongchamps, Chancelier du Consulat de France à Yokohama, en présence des témoins ci-après nommés;

A comparu

M. Paul Dourille, inspecteur de soies et négociant, demeurant à Yokohama No. 164, lequel nous a déclaré:

1. Copies of the French Consular Registration handed over to the President of the Yokohama District Court after the abolition of consular jurisdiction contain forty-seven registrations of similar import, from which those here given have been selected by way of example.

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Qu'il a fait édifier sur un terrain lui appartenant et connu sous le Numéro 164 A de la concession étrangère de Yokohama où il se trouve situé,

Une maison en pierre et brique, un godown à étage en briques et un petit godown en bois sans étage;

Qu'il estime que ces constructions ont ensemble une valeur de douze mille yen (monnaie officielle japonaise);

Desquelles comparution et déclaration le comparant a requis acte que nous lui avons octroyé;

Dont acte

Fait et passé en la Chancellerie du Consulat de France à Yokohama, le trente et un Juillet mil huit cent quatre vingt dix neuf, en présence de M. M. François et Blum, citoyens français, majeurs, immatriculés au Consulat de France, témoins instrumentaires requis qui ont signé avec le comparant et nous Chancelier après lecture.

(Signé) A. François. (Signé) E. Blum.
(„) Dourille. („) Raoult Deslongchamps.

Seal

Pour extrait certifié conforme, à Yokohama, le 31 Mars 1900.

Le Chancelier substitué
(Signé) François Grosos.

Vu pour légalisation de la signature de M. François Grosos, Chancelier substitué de ce Consulat:

Yokohama, le 31 mars, 1900.
Le Consul,

Seal

(Signé) L. Ratard.

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Lot No. 77. Settlement.

Transcription de construction de maison sur le lot No. 77. (Settl.)

Paul Sarda.

Par devant nous, Paul Louis Raoult Deslongchamps, Chancelier du Consulat de France à Yokohama, en présence des témoins ci-après désignés, également soussignés;

A comparu

M. David Becker, ingénieur, demeurant à Yokohama No. 84[B], agissant en qualité de mandataire de M. Paul Sarda, architecte, demeurant à Yokohama No. 84[B], aux termes d'une procuration reçue en brevet devant le Chancelier soussigné le dix neuf Juillet dernier.

Lequel nous a déclaré que son mandant a fait édifier sur un terrain sis au No. 77 A. B. C. D. de la concession étrangère et appartenant à Alexander Marks qui lui a loué suivant bail pour une période de vingt ans des constructions ci-après:

Quatre maisons à deux étages, construites en pierre et couvertes en tôle et ardoises métalliques,

Qu'il estime que ces constructions ont ensemble une valeur de trente mille yen, monnaie officielle du Japon,

Desquelles comparution et déclaration le dit comparant a requis acte que nous lui avons immédiatement octoyé;

Dont acte

Fait et passé en la Chancellerie du Consulat de France à Yokohama, le trois Août mil huit cent quatre vingt dix neuf, en présence de M. M. Blum et François, citoyens français, majeurs, immatriculés au Consulat de France, négociants, demeurant à Yokohama, témoins instrumentaires requis qui ont signé les présentes avec le comparant et nous Chancelier après lecture.

(Signé) RAOULT DESLONGCHAMP. L. S.
BLUM. FRANÇOIS. D. BECKER.

Seal

Pour extrait certifié conforme, à Yokohama, le 31 Mars 1900.

Le Chancelier substitué,
(Signé) FRANÇOIS GROSOS.

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Vu pour légalisation de la signature de M. François Grosos, Chancelier substitué du Consulat de France:

Yokohama, le 31 Mars 1900.

Le Consul,

Seal (Signé) L. Ratard.

Note—:Italics do not appear in the original, but are used here for the purpose of marking the passages to whichattention is invited.

SPECIMEN OF CONSULAR REGISTRATION OF SUB-LEASES OF PROPERTY IN THE FORMER SETTLEMENTS.

Sub-lease of Lot No. 162, Settlement, Yokohama, and of buildings standing thereon.[1]

Lot 162 Settlement. Bail en faveur de Paul Sarda. 3 Août année 1899.

Par devant nous, Paul Louis Raoult Deslongchamps, Chancelier du Consulat de France à Yokohama, soussigné, en présence des témoins ci-après dénommés et soussignés;

A Comparu,

M. David Becker, ingénieur, demeurant à Yokohama No. 84, mandataire de M. Paul Sarda, architecte, demeurant à Yokohama No. 84, aux termes d'une procuration en brevet par devant le Chancelier Soussigné, le dix neuf Juillet dernier.

1. This is taken from the copies of the French Consular Registration furnished to the President of the Yokohama District Court after the abolition of consular jurisdiction. Copies of the registration of such rights only as were actually in existence at the time the Revised Treaties took effect, were supplied by the French Consul to the Japanese Court. Among such registrations are found eight cases of sub-leases; and every one of them contains the expression "*with all the buildings thereon*" or words to that effect. In seven out of the total eight cases, stipulations appear to the effect that the ground-rent is to be paid by the lessor of the property, but that the lessee shall pay all local or municipal taxes leviable from the house-holder in occupation of the premises.

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Lequel nous a présenté avec réquisition de procéder à sa transcription sur le registre des actes notariés tenu en la Chancellerie du Consulat de France à Yokohama un acte sous seing privé rédigé en langue anglaise en date à Yokohama du dix sept Juillet mil huit cent quatre vingt quinze, et contenant bail à son mandant par le sieur Alexandre Marks d'un terrain connu sous le No. 162 de la Concession Étrangère ensemble la traduction dudit acte, à laquelle il a été procédé à la date de ce jour.

Déférant à cette requisition nous avons ci-après transcrit intégralement des dits actes et traductions qui ont été par nous immédiatement rendus au comparant et dont suit la teneur:

LEASE.

This Indenture made the seventeenth day of July in the year of our Lord one thousand eight hundred and ninety five,

Between Alexander Marks of Yokohama (Japan) on the first part, agent and attorney Julius Witkowski,

And Pierre Paul Sarda of the same place of the second part,

Witnesseth that the said Alexander Marks for and in consideration of the rents, covenants and agreements hereinafter mentioned, reserved and contained on the part and behalf of the said Pierre Paul Sarda, his heirs, executors, administrators and assigns, to be paid, kept and performed, hath granted, demised and leased and by these presents doth grant, demise and lease, unto the said Pierre Paul Sarda, his heirs, executors, administrators and assigns all these premises situated, lying and being in the foreign Concession of Yokohama (Japan), and described as follows:

All that Lot known as No. 162 foreign Concession *with all the buildings thereon*,

To have and to hold the above mentioned and described premises with the appurtenances thereon to the said Pierre Paul Sarda, his executors, administrators and assigns from the first day of August in the year of our Lord one thousand eight hundred and ninety five for and during and untill the full end and term of twenty years, thence next ensuing and fully to be complete and ended, yielding and paying therefore unto the said Alexander Marks, his heirs or assigns monthly

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and every month during the said term hereby granted, the monthly rent or sum of ninety dollars, local currency, lawful money, in equal monthly payments, to wit; on the tenth day of each and every month during the said term: the first payment to be made on the tenth day of August, A. D. one thousand eight hundred and ninety five.

Provided always, nevertheless, that if the monthly rent above reserved, or any part thereof shall be behind or unpaid, on any day of payment whereon the same ought to be paid, as aforesaid, or if default shall be under in any of the covenants herein contained on the part and behalf of the said Pierre Paul Sarda, his heirs, executors, administrators and assigns to be paid, kept and performed, then and from thenceforth it shall and may be lawful for the said Alexander Marks, his heirs or assigns, or his or their agent for the time being, into and upon the said demised premises and every part thereof with or without recourse of law, wholly to re-enter and the same to have again, repossess and enjoy as in his or their first former estate, anything herein contained to the contrary thereof in any wise notwithstanding.

And the said Paul Pierre Sarda for himself, his heirs, executors, administrators and assigns doth covenant and agree to and with the said Alexander Marks, his heirs and assigns, by these presents that the said Pierre Paul Sarda, his heirs, executors, administrators or assigns shall and will monthly and every month during the term hereby granted, well and truly pay or cause to be paid, unto the said Alexander Marks, his heirs or assigns the said monthly rent above reserved on the days and in the manner limited and prescribed as aforesaid for the payment thereof, without any deductions fraud or delay according to the true intent and meaning of these presents.

After the expiration of the first ten years it is agreed that the monthly rent to be paid shall be as follows: from the 1st August, 1905, up to August 1st, 1910, at the rate of $ 100.00 say one hundred Dollars local currency, and from August 1st, 1910, up to August 1st, 1915, at the rate of $ 105.00 say one hundred and five Dollars local currency per month.

And the said Alexander Marks, his heirs, executors, administrators and assigns shall pay all ground-rent due on the said property; but the said Pierre Paul Sarda, his heirs, executors, administrators and assigns shall pay all local or municipal taxes that are now or

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may hereafter be levied by the proper authorities in so far as such can or may affect Pierre Paul Sarda as the house-holder in occupation of the said premises.

And the said Pierre Paul Sarda for [himself,] his heirs, executors, administrators and assigns doth covenant and agree to and with the said Alexander Marks, his heirs and assigns by these presents that the said Pierre Paul Sarda, his heirs, executors, administrators or assigns shall not use or occupy the said premises for any business deemed extra-hazardous on account of fire nor any purpose repugnant to the public health or morality.

And that on the last day of the said term or other sooner determination of the estate hereby granted, the said Pierre Paul Sarda, his heirs, executors, administrators or assigns shall and will peacefully and quietly leave, surrender and yield up unto the said Alexander Marks, his heirs or assigns all and singular the said demised premises in good and sufficient order, reasonable wear and tear thereof excepted.

The party of this second part hereby agrees to keep buildings and improvements on Lot No. 162 always up to a value of at least six thousand to eight thousand dollars, local currency, to hold them in good order and repair and, furthermore, to have all the buildings on said Lot No. 162 insured against fire risk for at least eight thousand dollars local currency in a first class insurance company and in case the buildings are destroyed by fire the amount received from the underwriters to be forthwith invested in the erection of new buildings on the said Lot No. 162. At the termination of the present Lease the party of the second part will quit and surrender the said Lot No. 162, buildings all and all composement erected upon [*sic*] hereby let and demised, in a peaceable and quiet manner to the party of the first part, his heirs, executors, administrators or assigns without any compensation.

And the said Alexander Marks for his heirs and assigns doth covenant and agree by these presents that the said Pierre Paul Sarda, his heirs, executors, administrators or assigns paying the said monthly rent above reserved and performing the covenants and agreements aforesaid on his and their part, the said Paul Pierre Sarda, his heirs, executors, administrators and assigns shall and may at all times during the said term hereby granted peaceably and

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quietly have, hold and enjoy the said demised premises without any manner of trouble or hindrance of or from the said Alexander Marks, his heirs or assigns or any person or persons claiming under him or them.

In witness whereof the said parties have hereunto set their hands and seals this seventeenth day of July in the year of our Lord one thousand eight hundred and ninety five.

(Signed) ALEXANDER MARKS,
by his attorney T. WILKOWSKI.

(Signed) P. SARDA.

Signed, sealed and delivered by said Alexander Marks in the presence of
(Signed) L. LICHTENSTEIN.

Seal

Pour extrait certifié conforme, à Yokohama, le 31 mars, 1900.

Le Chancelier substitué,
(Signé) FRANÇOIS GROSOS.

Vu pour légalisation de la signature de M. FRANÇOIS GROSOS, Chancelier substitué de ce Consulat:

Yokohama, le 31 mars, 1900.

Seal

Le Consul,
(Signé) L. RATARD.

Note:—Italics do not appear in the original, but are used here for the purpose of marking the passages to which attention is invited.

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MISCELLANEOUS.

ACCOUNT OF THE PROCEEDINGS OF A MEETING OF FOREIGN LAND-RENTERS HELD AT YOKOHAMA ON JANUARY 19, 1900.[1]

A meeting of land-renters in the former Settlement of Yokohama was held on Friday afternoon at Keil's Building. Mr. Holm, Chairman of the International Committee, presided over a large and representative meeting. Among others present were: Messrs. J. F. Lowder, W. B. Walter, J. Dodds, W. W. Till, J. Witkowski, P. Sarda, Captain Swain, Messrs. Harlow, Gargan, Von Hemert, Mathews, Giusanni, Mees, F. H. Bull, Diack, J. Curtis, Gordon, Helm, F. W. Mitchell, Hutchinson, W. T. Payne, J. L. O. Eyton, Allcock, Tom Thomas, J. W. Hall, D. Jackson, M. Russell, Gibbons, V. Blad, B. C. Howard, C. V. Sale, Rev. E. S. Booth, Messrs. Lines, F. Adet, G. C. Wilson, J. H. Brooke, Grauert, Wylie, Townley, E. B. Jones, Alcott, Coe, Strome, F. Staniland, B. Gillet, Manuel, E. J. Moss, C. D. Moss, P. Colomb, Pors, Kaufmann, Tegner, F. S. James, C. R. M. Morton, Hartland, A. O. Gay, &c., &c.

In opening the meeting the CHAIRMAN said:

As Chairman of the International Committee, at whose instance this meeting has been called, I beg to offer a few remarks with regard to the object we had in view in inviting you here to-day. Among the many momentous questions which have presented themselves in connection with the inauguration of the new regime one of the most important is the one dealing with the registration and transfer of our landed property and the law of succession and of mortgages. Immediately upon the coming into operation of the present Treaties it was found that the necessary machinery of law for registering and transferring our perpetual leases, was not

1. This is taken from the "Japan Weekly Mail" of January 27, 1900, a newspaper published at Yokohama.

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provided in the Japanese law as it then stood. Everything being new to foreigners as well as to the Japanese it was generally believed that things would right themselves by and by, and beyond some individual movements and a general report to the foreign Consuls and Ministers, or to some of them, no concerted action was taken for several months. Towards the end of last year, when the grievous consequences of the non-settlement of this question made themselves more and more apparent, the International Committee took it upon themselves to address His Excellency the Minister of State for Foreign Affairs, Viscount Aoki, on this subject and to solicit his good offices on our behalf. In one letter it was pointed out that in the Treaties the confirmation of our perpetual leases is guaranteed and that through the delay already occasioned in the settlement of the question our property was continuously and adversely affected. The terms of the letter to His Excellency were as follows:—

INTERNATIONAL COMMITTEE.

23rd December.

To His Excellency Viscount Aoki Shuzo,
Minister of State for Foreign Affairs,
Tokio.

Your Excellency,—The International Committee of Foreign Residents of Yokohama beg to submit to Your Excellency that although the new Treaties between Japan and foreign countries provide that:—

> Existing leases in perpetuity under which property is now held in the foreign Settlement shall be confirmed and no conditions whatsoever other than those contained in such existing leases shall be imposed in respect of such property,
>
> Les baux à perpetuité en vertu desquels les étrangers possèdent actuellement des propriétés dans les quartiers seront confirmés, et les propriétés de cette nature ne donneront lieu à aucuns impôts, taxes, charges, contributions ou conditions quelconques autres que ceux expressément stipulés dans les baux en question,

yet no such confirmation has hitherto been made; also that no means have been provided for the registration of transfers,

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mortgages, or successions of the above property since the Treaties came into operation some five months ago.

The Japanese Courts where leases under "superficies" can be registered take no cognizance of Settlement perpetual leases, and only offer to register these as "superficies." Further, a charge of two and a half per cent. on the values of properties sold has been claimed, though under the old system of transfer at the *Kencho*[1] transfers have been effected free of any tax.

Consequent upon the above difficulties, the values of property in the former foreign Settlements have been greatly unsettled, and a general feeling of distrust and uncertainty has been created, which has a very injurious effect, tending to prevent the further introduction of foreign capital into Japan and rendering former Settlement property unsaleable at present.

Such a result, after treaty revision, is, we feel sure, not in accordance with the wishes of the Imperial Japanese Government, for we had the assurance of His Excellency the Minister President of State on the 4th of August last "that the foreign residents would not suffer any inconvenience under the new conditions," as well as that of Your Excellency on the 10th of April last "that the foreign residents could entrust with confidence their persons and property to the safe-guarding of the Japanese Authorities."

I take the liberty of addressing Your Excellency on this subject, which is one of the greatest interest to the foreign community, in view of the invitations which you have on several occasions given us to communicate with Your Excellency direct, and the Committee look with confidence to Your Excellency for the removal of the grievances which I have now ventured to bring before your notice.

I have the honour to remain,

Your Excellency's most obedient servant,

H. J. Holm.

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1. Local Government Office.

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Shortly afterwards, I believe on the 27th of December, an Imperial Ordinance was issued which, according to the opinion of His Excellency the Minister should prove satisfactory to the members of the foreign community, and he accompanied this by a verbal assurance that the Imperial Government never intended to in any way encroach upon treaty rights, and that the delay was due to some difficulty in connection with determining form only. I avail myself of this opportunity of recording our thanks for this courteous assurance, and I think I may add that never anyone of us has harboured a fear that the Imperial Government would not always rigorously adhere to treaty agreements. At the same time it must not be lost sight of that the officials of the courts of law, where these matters have to be dealt with in the first instance, have only the law as it reads to guide them and that they are apt to ignore treaty stipulations, as is shown by the judgment of the *Chiho Saibansho*[1] in what is commonly known as the Healing case, of which a report is found in the papers of the end of December (Mr. Holm here recited the material points of the case from the newspaper reports). As I said before, I feel pursuaded that no injustice is intended by the Imperial Authorities and that on appeal or otherwise such treaty stipulations as may apply will be finally given full weight. (Hear, hear.) Now, as for the Imperial Ordinance of December last, which it was hoped would put an end to our troubles, the same has been given full consideration; and I very much regret to say that the general consensus of opinion appears to be that the situation has not been much improved by it. The only difference as compared with the state of things existing previously is that, instead of one, we have now two kinds of superficies—one a superficies pure and simple, and another one with "perpetual lease" in brackets attached to it. I learn that in some quarters it is advanced that the superficies as now offered us is, if anything, even better than our former perpetual lease. I don't propose to pass an opinion on a question of this kind, about which even law students have so far been unable to agree, but I can not but share the fear that this double kind of superficies in the future may give rise to mistakes and confusion

1. District Court.

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and great insecurity, which could easily be avoided if the whole matter was once for all put in indisputable language. The wording of the Treaties themselves is perfectly clear and precise on this point, namely: "Existing leases in perpetuity under which property is now held in the foreign Settlements shall be confirmed, and no conditions whatsoever other than those contained in such existing leases shall be imposed in respect of such property." In addition to this it strikes me as only reasonable that people should prefer the old accustomed perpetual leases, which have given satisfaction and security for now upwards of 40 years, to something new and as yet untried, the more so as the acceptance of superficies in any shape or form would practically mean an amendment of the Treaties as just read. I think there can be no doubt about this. I am very glad to see the representatives of the Press here, as this will be an additional guarantee that no misconception can be formed with regard to the holding of this meeting. Transactions in property have now been suspended for six months or more, and it goes without saying that this can not be suffered to continue. At the same time we have met here in a perfectly friendly spirit, and I trust that the Imperial Japanese Government will be disposed to deal with the matter in a manner no less conciliatory and that it will be understood that we do not wish to ask for anything but what we believe to have been promised us by Treaty. If our trouble is again placed before the Imperial Japanese Government in this form, I feel sure that they will put matters again on a confidence-inspiring and working basis without further delay. With regard to our Consuls and Representatives in Tokio I may say that this matter is understood to have all their attention, and I think they will gladly welcome an expression of opinion on this matter by such a representative meeting as this. This, gentlemen, is how the matter now stands. The International Committee has thought it proper to call this meeting of land-renters as they are the parties primarily and directly interested and as, moreover, some of the largest lease-holders are not among the supporters of this Committee. With these remarks I now leave the question to the meeting. We shall be grateful for any further information that any of the gentlemen present may be in possession of, and I am also ready to answer any questions that may be asked to the best of my ability. (Applause.)

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Mr. W. B. WALTER called attention to the wording of the Treaties on the question of leases in perpetuity and said the opinion of that meeting probably agreed with that of the International Committee, namely, that the form of lease which it was proposed they should accept, *viz.* superficies, was not the tenure on which they had held their land hitherto; and as the Treaty expressly called for the confirmation of the existing leases the foreign land-renters would like to see that confirmation given as quickly as possible, in order that they should feel the same confidence in their existing leases as they had felt hitherto. (Hear, hear.) There was another matter which they might perhaps think trivial, but which he still thought merited attention. The Japanese Local Authorities had proposed to levy on the buildings which were situated on their land certain municipal and local taxes. Included in these taxes were the cost of maintaining roads and drains. In connection with that matter he begged to read to the meeting the following extract from the Land Regulations of Kanagawa of August, 1860, which he believed were the earliest regulations on the subject:—

> The proprietorship of the soil being vested in the Japanese Government the streets, roads, and ditches will at all times be kept in thorough order and repair, and sewers or drains will be made when necessary by the Japanese Government and no tax will be levied on renters in the foreign quarter for this purpose.

They knew perfectly well, continued Mr. Walter, that in these taxes were included certain expenses connected with roads and drains. It was evident from these regulations that, however liable foreign rent-holders [land-renters] might be for other taxes, the amount for roads and drains should be deducted. Into the larger question, as to whether any tax should be levied on buildings or land in the former foreign Settlements, he preferred not to enter at the present time. Probably others present at the meeting would have a good deal to say on these subjects, and as a guide to the discussion he should move the following resolutions:—

> It is resolved by this meeting of land-renters of the former foreign Settlement of Yokohama that the following facts

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be brought to the notice of the Imperial Japanese Government:—

1. That although the Revised Treaties provide that the existing Government leases in perpetuity of foreign settlement property shall be confirmed, steps have not yet been taken by the Government to confirm them, and the laws of Japan appear to contemplate their compulsory conversion into a new and different kind of right, which is called "superficies."

2. That under existing laws the right of perpetual lease is not recognized, and since the coming into operation of the Revised Treaties the holders of such leases have been unable to sell or mortgage their land except on the terms of allowing the leasehold interest to be registered as a "superficies," which they have been and are unwilling to do.

3. That the non-recognition of what foreigners conceive to be a right plainly secured to them by their title-deeds and by Treaty, has resulted in a general feeling of insecurity, and is stopping all sales and mortgages of former foreign settlement property and is threatening such property with a very serious depreciation in value.

4. That in order to remedy the evils of the situation and to restore confidence it is most desirable that the Imperial Japanese Government shall at once confirm the aforesaid leases in perpetuity and make all necessary provisions for their recognition by law, and for the registration of them under a separate designation.

5. That properties held by foreigners in the former foreign Settlements have been made subject to new conditions and taxes and charges from which, in the opinion of this meeting, the Revised Treaties were intended to exempt them.

And it is further resolved that copies of the foregoing resolutions be forwarded to His Imperial Japanese Majesty's Minister for Foreign Affairs through the usual channels.

Mr. WYLIE seconded the resolution without comment.

The Rev. E. S. BOOTH—May I offer an amendment something to this effect:—"That these resolutions be presented or brought to the attention of the Foreign Office of the Imperial Government through the Ministers represented in the foreign Concession." As the resolution stands it sends the resolutions from this meeting directly to the Foreign Office. It seems to me it would meet the purpose better, if it came through our natural authorized

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Representatives. They may be able to give us some light on the intent and meaning of the Treaty or the Treaties between various Governments and Japan. It may be assuming a little for us to pass judgment upon the Treaties whatever the Treaties are. I think that every one will concede that the Treaties stand above the national law, and if the plain English in the Treaties have the ordinary meaning of English the resolutions presented by Mr. Walter are well taken and will no doubt be properly considered by the authorized Representatives of our nationalities. I simply make this amendment that, in place of the last clause that the resolutions be sent to the Foreign Office, we insert that they be sent to the Ministers.

The CHAIRMAN—I think that is a question which might be discussed.

Mr. WALTER—Possibly Mr. Booth will allow me to say a word. I have only suggested that the resolutions should be forwarded; I have not said anything as to the way in which they should be forwarded. The opinion of the meeting will naturally direct the mode of communication with His Excellency. (Hear, hear).

The CHAIRMAN—Would it agree with your intention, Mr. Walter, to include this in your resolution.

Mr. WALTER—Certainly, I would add that copies of this resolution shall be forwarded through the usual channels. (Hear, hear.)

After some further discussion Mr. TILL proposed:—"That the report of this meeting be forwarded to leading newspapers in Europe and America for publication in order that land-renters absent from Japan may become acquainted with the condition of property in this country held by aliens." (Loud applause.)

Mr. PARSONS—I second that.

Mr. TILL—Perhaps it would be as well to add to that, after newspapers, "and Chambers of Commerce."

The CHAIRMAN then read the resolution to the meeting.

Mr. LINDSLEY—I would suggest that there be added also "the American Asiatic Association and the China Association."

The Rev. E. S. BOOTH—I would call for the reading of the previous question *seriatim*.

The CHAIRMAN then read Mr. Walter's resolution again.

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After some few immaterial remarks the motion was put and carried amid applause.

The CHAIRMAN—Next we come to Mr. Till's motion, seconded by Mr. Parsons.

Mr. SALE—I think that that needs a little consideration. It is a proposition which implies a little irritation—a sort of showing up of the Japanese. They tried to meet us in this matter, and they might try to meet us again. I think we ought to wait until we know what are the results of these resolutions brought forward by Mr. Walter.

The CHAIRMAN—Do you bring that forward as an amendment.

Mr. SALE—I do.

The Rev. E. S. BOOTH—I beg to second that. I have a similar feeling that it may be misconstrued by those who are not here to see that this meeting is in every sense a friendly one to the Government under whose laws we are at present, and those who are separated from the discussions which have led up to the calling of the meeting would, I fear, put a wrong construction upon a measure looking for so wide a publicity. If these resolutions going forward fail to meet the difficulty there is yet time to give publicity, and it will have a clincher to go with it which will be found of more effect than to send it forth prematurely.

Mr. HARTLAND thought there was a misapprehension.

The gentlemen who had just spoken did not apparently quite grasp the reason for sending this report to the papers at home. It was not to say that there was any feeling of irritation (hear, hear), but in order to give land-renters who were not present in Japan an opportunity of seeing what was being done. (Hear, hear.)

The CHAIRMAN—It has been proposed as an amendment that action be postponed until an answer has been received to the proposition made by Mr. Walter already passed. I will now put the amendment.

The amendment was then put and was defeated by a large majority.

Mr. Till's motion was then submitted and the CHAIRMAN declared it carried by an overwhelming majority.

Mr. TILL—You may mention that there were three against it

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That makes a considerable difference. (Loud laughter.)

The CHAIRMAN—Now that these resolutions have been passed, the question comes who is to forward them. The International Committee has been going on investigating the matter, but as I said before many of the land-renters and some of the largest lease-holders are not members of this Committee, and I think it therefore only right that the members among themselves should elect a Sub-committee for the purpose of further dealing with this question. I shall be pleased to hear the opinion of the meeting.

Mr. WALTER—I beg to propose that you as Chairman of this meeting forward the copies of this resolution, and that as regards any further steps that require to be taken by the different nationalities that each nationality should form its own Committee, but that as regards the presentation of the resolutions themselves you as Chairman should sign and forward them. (Hear, hear.)

The CHAIRMAN—Don't you think that this would be an opportunity for the land-renters—as a great many are present—to select a General Committee; because it is all very well that every nationality is invited to form a Sub-committee, but I think that in the long run it would not work, because the interests we are discussing here are the general interests. We are all in the same position and I think a General Committee would be able to do more than if you split it into quite a number. All nationalities are represented here and perhaps each will mention the name of one of their number, and in this way we may arrive at a representative committee of all nationalities.

Mr. TILL—Before Mr. Walter's resolution is put I would ask whether, if the terms of the resolution are carried out and the Japanese Foreign Minister is addressed through the different Ministers in Tokio, those Ministers would receive a resolution from an International Committee. Would the British Minister receive a communication addressed to him by an international meeting? I think that is a question.

The CHAIRMAN—It is a pertinent question. The Ministers so far have not recognised the International Committee in any official way. But that may perhaps be overcome by forming a General Committee with each nationality contributing one or more members, each member forwarding the resolutions to his own

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Minister. If the resolutions are forwarded, say, by a British subject only, the British Minister will receive them.

The Rev. E. S. BOOTH—It appears to me that the position of the Chairman is well taken and I would move that the Chairman appoint an International Committee.

The CHAIRMAN—I think that would be rather a difficult task for me. I should like to leave that to the meeting.

Mr. LINDSLEY—I move that each nationality sends the resolutions forward and that as many signature as possible be obtained among its nationals.

Mr. WALTER—I beg to propose as a nucleus of this Committee that Mr. Holm be elected for the German community; that Mr. Till be elected for the English; Mr. Lindsley for the American; other gentlemen will kindly propose their members for other nationalities, and I think we shall arrive at a solution of the difficulty.

Mr. TILL proposed that the British elect their own representative, the Germans their own, and so on.

The CHAIRMAN—I quite agree.

Mr. DODDS, referring to Mr. Lindsley's suggestion of obtaining signatures, said he did not agree with this part of the proposal. It would weaken the effect of the resolutions passed that day. He did not think any signatures could add to the weight of that meeting, which was the largest he had ever attended in Yokohama. (Applause.)

The Rev. E. S. BOOTH—I beg as an American citizen to nominate Mr. Lindsley. May I put that to the meeting, Mr. Chairman?

The CHAIRMAN assented, and the motion was adopted.

Mr. WALTER proposed Mr. Till to represent the British community.

Mr. TILL—But my resolution has not yet been passed. I propose that the members of each nationality here present elect a representative to forward the resolutions previously agreed upon to their respective Ministers.

Mr. JACKSON seconded.

Mr. LINDSLEY—Then I withdraw my motion.

Mr. Till's resolution was carried.

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The CHAIRMAN—Then we may now take Mr. Booth's proposition.

Finally, after some discussion of minor points, the following were elected:—

British—Mr. Till.
American—Mr. Lindsley.
German—Mr. Pors.
French—Mr. Sarda.
Italian—Mr. Giusanni.
Dutch—Mr. Klingen.
Swiss—Mr. Colomb.
Danish—Mr. Blad.

The CHAIRMAN—I take it, then, that these gentlemen will see that these resolutions are sent to their respective Ministers.

Mr. MITCHELL—I would like to call attention to one point, and that is the necessity of obtaining legal assistance with regard to this question. I believe that up to the present the onus of doing so has fallen upon a certain number of property owners in the former Settlements and it is no doubt necessary that the matter, which has been so far taken up, should be continued. I would suggest that the gentlemen who are here present this afternoon should add their names to the list of those that have already subscribed to bear the necessary expense.

It will not be a very large sum if it is distributed among so many, and I think that in such circumstances all who are interested in property will be quite willing to contribute their share. There are some of course who are large holders of property and others who own only very small lots, and I would suggest that some arrangement be made whereby these expenses should be contributed *pro rata*, that is to say, taking the value of the year's rental.

Mr. JOHNSTONE seconded.

Mr. MITCHELL—Perhaps ground-rent would be better than the rental, as it would be fixed, whereas the other is liable to variation.

Mr. LINDSLEY asked if there was any idea of what the expenses would be. What had they been so far?

Mr. MITCHELL—Up to the present time the services of Mr. Walford have been engaged in this matter. I don't know the exact

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number who have contributed. There are several. I have no list at present. As to what the ultimate expenses may be, it would be difficult for me to say. I would suggest that any future arrangements that may be made may be left to the Committee, which has been elected from each nationality. (Hear, hear.)

Mr. LINDSLEY—Is it not possible to know approximately the amount incurred?

Mr. MITCHELL—I don't think any account has been rendered.

Mr. LINDSLEY—Would we be committed to any indefinite amount by passing this resolution?

Mr. MITCHELL—Well, it would certainly be difficult to define any particular sum at the present time. As I said, the expenses divided among so many would be a trifle.

Mr. WYLIE—I would suggest that Kobe and Nagasaki be invited to join us.

Mr. LINDSLEY—I have heard the sum of 20,000 *yen* mentioned as expenses to date. I should like to know if there is any authority for that.

Mr. MITCHELL—There has been no such sum as that incurred to date.

Mr. LINDSLEY—Nothing like it?

Mr. MITCHELL—No, nothing like it.

After further explanations, Mr. TILL asked if Mr. Mitchell would include in his resolution the expenses already incurred.

Mr. MITCHELL—If the meeting agrees.

Mr. TILL—So far they have been incurred by a few men, but they have all been incurred for the benefit of property owners generally.

The CHAIRMAN—The resolution now reads:—"That land-renters of the former foreign Concessions of the Empire of Japan present at the meeting be invited to contribute to the legal expenses which may be incurred in connection with the subject, and that the amount required be divided *pro rata* on the basis of ground-rents paid by each proprietor; that Kobe, Tokio and Nagasaki be invited to join; that expenses already incurred may be included at the discretion of the Committee as elected."

Mr. KAUFMANN remarked that with regard to Kobe he had

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been informed that they were going to call a similar meeting, and he believed that if they wanted legal advice they would procure it themselves, and would not join with Yokohama.

The CHAIRMAN—The resolution does not commit us to any thing. It simply says they will be invited.

Mr. MACARTHUR said with regard to these legal expenses it was true that they had been incurred up to the present by individuals for their particular and private benefit, but all the land-renters would reap the benefit also, and the meeting should consider that point and include all expenses in those to be borne by the meeting.

The CHAIRMAN—This is a matter that may be left to the discretion of the Committee elected.

Mr. TILL—This meeting is the outcome of what has already been done.

The motion was carried.

Mr. MITCHELL—I would suggest that those gentlemen who are willing to contribute put their names on the list.

The meeting ended with a vote of thanks to the Chairman.

EXTRACTS FROM THE MINUTES OF THE PROCEEDINGS OF THE MUNICIPAL COUNCIL AT KOBE.

Minutes of the Ordinary Monthly Meeting held August 18, 1880.

* * * *

Mr. Browne [Vice-President and Treasurer of the Municipal Council] then begged leave to say a few words upon the state of the Council's finances, before the [Council] came to any decision about the additional lamps. He thought some of the other lamps could possibly be exchanged. He then made a brief statement showing that the annual expenditures was in excess of the annual income by about $ 500.[1]

* * * *

1. In the Minutes of the Proceedings of the Municipal Council from which these extracts are taken, the symbol "$" is used throughout to represent Japanese "*yen*."

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Minutes of the Ordinary Monthly Meeting held February 14, 1885.

* * * *

Mr. Browne said the Council had always spent its income in advance and must continue to do so until they were in a better financial position. In the estimates of the revenue there was a sum of $4,000 that actually belonged to their Revenue Fund. in reality the $4,000 came from the year 1881. In 1880 their expenditure was $13,429 and income $13,800. Next year the expenditure was $15,021 but as they had a surplus of accumulations aggregating $8,161, the police tax for some years had not been collected. Every year since, their expenditure had exceeded their income and the Reserve Fund has been gradually diminished. The deficiency in 1882 was $2,100, in 1883 $950, in 1884—when the gaol returned an unexpected profit of $1,100—$920, and according to the Honorary Treasurer's estimates, the deficiency on the operations this year will be $1,700. This will bring the Reserve Fund down to only $2,000.

* * * *

Minutes of the Ordinary Monthly Meeting held February 16, 1893.

* * * *

The Honorary Treasurer read his annual report.

THE TREASURER'S REPORT FOR 1892.

* * * *

I regret to inform the Council that our income for 1892 has been overdrawn by the sum of $4,575.16 and it is my intention to deal with this deficit by recommending the adoption of extreme economy in public works, and asking the Council to re-impose the balance of the police tax namely one-sixth of a *bu* per *tsubo* which will give us $2,077.75 per annum.

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Minutes of the Ordinary Monthly Meeting held November 20, 1896.

* * * *

Mr. Braess said that before the members of the Council dispersed he wished to throw out a suggestion that as the year was nearing a close and the Budget would be up for consideration in January, it would be advisable for members of the Council to think over the subject of Municipal finances with the view of offering suggestions as to how they may be improved. Some discussion had taken place at a recent meeting of the Council, and it had been suggested that a voluntary contribution might be invited in addition to the taxes, but he thought the land-renters would not agree to such a proposal. Still, some means much [must] be devised to improve the finances so as to enable the Council to properly do the work that was necessary.

* * * *

Minutes of the Ordinary Monthly Meeting held February 26, 1897.

* * * *

Mr. Fearon [Treasurer] said that while presenting his report at the last meeting upon the Council's income and expenditure, the accounts for the past year had been laid upon the table. Since that time those accounts had been audited by Messrs. Braess and Oestmann; they reported on comparing the vouchers and books that they found them correct, and the accounts were now duly signed by them to that effect. He had at the same time to bring forward his estimate of expenses for the present year, and they would see that the total amount was $21,472.03. This was in excess of their income; but it was a necessary outlay and he would much like to see the money provided, if it was in any way possible. Their revenue last year was $18,078, and their requirements this year were some $3,500 in excess of that sum. There were one or two items that could be eliminated, but they could not properly

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be dispensed with; the bulk of the items estimated were the same as last year. The statement he had to place before them was as follows:

ESTIMATED EXPENDITURE 1897.

Ground-rent Concession	527.66	
„ „ Public Park	166.75	
		694.41
Insurance on building		67.50
Repairs to streets	4,000.00	
Repairs and renewals crossings	500.00	
		4,500.00
New water tank and pump		500.00
Recreation Ground fence	234.00	
„ „ seats	100.00	
„ „ flowers	25.00	
		359.00
Covers for fire-wells and Division Street drain	50.00	
Painting water carts, tanks and stands	36.00	
Repairing water carts	50.00	
Repairing pumps for filling carts	30.00	
Painting Bund seats	55.00	
Renewing Concession trees	100.00	
Repairing Bund fence	35.00	
Subscription to newspaper	24.00	
Hong list	1.50	
Stationery	20.00	
		401.50
Sundry Wages:—		
Office *Banto*	195.00	
Gardener	168.00	
Charge-room watchman	102.00	
Cemetery watchman	150.00	
Gaol and Compound coolie	102.00	
Japanese Police servant	63.00	
		780.00
Expenses attending elections		47.00
Gas for Concession	2,520.00	
Gas for Municipal Hall	15.00	
„ „ „ Office	20.00	
„ „ Town clock	50.00	
		2,605.00

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Salary Superintendent	3,000.00	
„ Police force	4,800.00	
		7,800.00
Foreign Police summer uniforms	66.00	
„ „ winter „	72.00	
„ „ boots	24.00	
		162.00
Japanese Police summer uniforms	93.00	
„ „ winter „	111.10	
„ „ boots and shoes	100.75	
		304.85
		18,221.26
Medical attendance	250.00	
Great coat for Police force	75.00	
Gas for Barracks and Gaol	177.00	
Coal. Hall, Barracks, Gaol, Office and Charge-room	182.00	
Charcoal for Japanese Police	74.77	
Fence between Municipal Compound and No. 39	40.00	
Scavenger contractor	2,220.00	
Cleaning and repairing sand traps and gutters	100.00	
Incidental expenditure	102.00	
Repairs to Fire Engine Premises	30.00	
		3,250.77
		21,472.03

He might at the same time mention that for several years past the expenditure had exceeded the revenue, and at the present time they had overdrawn the account to the extent of $ 7,834. That sum had been collected in advance, it was an anticipation of revenue, and with the exception of a small balance in hand it had all been expended already. They felt they had now about reached the end of their tether, and he would like the Council to take the whole matter of their financial condition into their careful consideration.

* * * *

Mr. Reynell said the proposition was one the Committee had unanimously decided to lay before the Council. He asked their

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permission to read it, as it was rather too long a statement to remember. He then read the following:

> The Honorary Treasurer's report leaves no doubt as to the precarious condition of the Council's finances. Taxes collected in advance and already spent represent an actual deficit of some $8,000. Moreover the lack of funds has, of late years, prevented any but the most urgent and superficial repairs from being made to the roads and drains; and the time has arrived when a complete and thorough overhaul of both has become an absolute and immediate necessity,—which work will require an expense of several thousands of dollars. With the general rise in prices and wages all round, the income of the Municipality has grown inadequate to meet even the ordinary expenses, and the putting in order of our finances and meeting the large expenditure now before us with the means at our disposal are simply a matter of *impossibility*!
>
> The Council being debarred from levying additional taxes, and an appeal to land-holders being inadvisable, the only way by which the Council can procure the funds of which it stands in such urgent need, is by disposing of its one asset, viz:—The Municipal property on Lot 38, Concession.
>
> It may not be unnecessary to recall that, when the Municipality was first organized by the Arrangement of August 7, 1868, the Japanese Government relinquished at the outset an amount of 2 *bus* out of the upset price of 8 *bus* per *tsubo* on the Concession Lots, and one half of all money realized on the public sales of these Lots over and above the upset price, for the purpose of forming a Municipal Fund "to be used for the construction or repairs of roads and drains, lighting the streets, or other municipal purposes."
>
> It was out of this Fund that a Lot of land was bought with the object of erecting on it Municipal buildings and that the cost of erecting the said buildings was defrayed, the Lot being bought at public auction and a lease issued in the name of the Municipal Council, precisely as in the case of any other Lot purchased by a private firm or individual.
>
> By disposing to-day of these Lot and buildings, and devoting the proceeds to municipal purposes, the Council would therefore remain strictly within the terms of the agreement to which it owes its existence.
>
> After mature consideration of the scheme, and after consulting with the Finance Committee, the Working Committee has come to the conclusion that the most favourable manner of disposing of the aforesaid property would be by selling it, and retaining the use of it, on a yearly rent calculated to represent a certain percentage of the purchase money, for

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such time as the Municipality is to remain in existence.

Consequently, the Working Committee now beg to lay before the Council the following proposition:—

1st.—The said Lot of land, with the buildings thereon, No. 38 Foreign Concession, Kobe, be offered for sale by public tender, notice of which be given through the public press at Kobe, Yokohama, Nagasaki, Shanghai and Hongkong. Such tenders to be sent in to the Municipal Superintendent, not later than 31st day of May next ensuing.

2nd.—That the said building and Lot be sold with the condition attached that they be rented to the Council at a yearly rental to represent a certain percentage on the purchase money to be stated on the tenders, for such time as the Council may require.

* * * *

The Chairman invited a general expression of opinion upon the scheme.

* * * *

The Chairman felt the matter had been well discussed and proceeded to put the motion expressing adoption of the report and concurrence in its recommendation.

This motion was unanimously carried, the Governor also holding up his hand in its support.

Mr. Connelly moved and Mr. Wilm seconded that the Working Committee be charged with all preliminary matters called for by the proposition just concurred in.—Carried.

* * * *

Minutes of the Ordinary Monthly Meeting held September 24, 1897.

* * * *

Minutes of the last meeting were read and confirmed. The President notified the Board that the transfer of Lot No. 38 to the Roman Catholic Mission had been completed.

Mr. Fearon [Treasurer] stated that he had received $32,000 from the Mission, of which $20,000 had been put on fixed deposit for twelve months at 4%, $5,000 on fixed deposit for 6 months at 3½% and $7,000 to the current account.

* * * *

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NOTIFICATION OF THE SUPERINTENDENCY OF TRADE IN HONGKONG OF MARCH 10, 1856.[1]

Superintendency of Trade, Victoria.

A question having arisen as to the law by which contracts entered into with Her Majesty's subjects on Chinese territory by Chinese subjects for the cession of property in China, should be regulated, the matter has been referred by the Earl of Clarendon to the law Officers of the Crown, whose opinion is as follows:

"We are of opinion that British tribunals and judicial authorities in China are bound to observe the rules and principles of public or international law, as they are settled and received by the common consent of European nations.

"We do not concur in the conclusion of the Acting Attorney-General, that the Chinese are to be considered as beyond the pale of civilized nations.

"In all questions that may come before any British tribunal in China relating to the ownership or occupation of houses or lands, lying within the dominions of the Emperor of China, the law and custom of China, if they can be ascertained, must govern the decision unless by the terms of the contract the law or usage of some other country be imported into it; and if in any such case the Chinese law can not be ascertained, the decision must be governed by the principles of natural justice. There is no pretence for the introduction of the English law of real property.

"It is an universal principle of law in Europe, that in all questions respecting immovable property, the *lex loci rei sitæ* prevails; and we think it both right and useful that the same rule should be acted on in the administration of justice in China."

(By order)

G. W. Caine.

In the absence of the Officiating Secretary to Her Britannic Majesty's Plenipotentiary.

1. See British and Foreign State Papers, 1856–7, Vol. XLVII, p. 602.

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LEGAL ENACTMENTS IN BRITISH INDIA RELATING TO LEASES IN PERPETUITY.

Some of the Rules enacted by the Governor of Bombay in Council under Section 214 of the Bombay Land Revenue Code, 1879.[1]

RULE No. 23.—The occupancy of building-sites shall ordinarily be sold by auction to the highest bidder whenever the Collector[2] shall be of opinion that there is a demand for such sites; but the Collector may, in his discretion, dispose of the occupancies of such sites by private arrangement, either upon payment of a price fixed by him, or without charge as he shall deem fit.

RULE No. 24.—Auctions held under the last preceding Rule shall ordinarily be conducted in the town or village in which the land of which the occupancy is to be disposed of is situated, and the power of confirming the sales shall ordinarily be delegated by the Collector, under Section 12 of the Land Revenue Code, to the Mamlatdar or Mahalkari, but on these points the Collector may in special cases give such directions as he shall deem fit.

RULE No. 25.—Occupancies of building-sites shall ordinarily be disposed of for ninety-nine years, but subject to an annual ground-rent, the amount of which should be regulated by the value of the site, provided that—

(1) when, as in the case of building-sites at hill-stations, Government have sanctioned special rules, such rules shall be followed;

(2) the occupancy of land near a railway-station or in any situation where it is likely to become valuable or to be required for any public purpose, shall not be disposed of for long periods; and the occupancy of land near a railway-station shall not be disposed of without the previous sanction of the Commissioner nor while the line is under construction

1. See H. V. Sathe's "Land Revenue Code and the Rules thereunder," 2nd Edition, Bombay, 1894, pp. 260–262.

2. Collector of the District, being the chief local officer in charge of the revenue administration of a district.

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without first consulting the railway authorities;

(3) the occupancy of land of the nature described in the last clause or of land in towns and other places of considerable size or of increasing importance shall be disposed of subject to such conditions as to the style and size of the buildings to be erected thereupon as Government shall in any case direct;

(4) In any case the ground-rent instead of being rendered annually may, with the consent of the Collector, be paid by the occupant at the time of the grant of the occupancy, or at any subsequent time in a lump sum at once for the whole period of the lease or for the whole of the still unexpired period of the lease, as the case may be, a note of such payment being made at the foot of the lease or agreement which shall be executed in respect of the occupancy under Rule 31 or 32.

Form of Lease of building-sites to be ordinarily granted by Collectors[1] when no special conditions have been prescribed in respect of the disposal of such sites under No. 25 of the Land Revenue Code Rules,[2] and no survey settlement has been extended to the land.[3]

This is to certify that *on payment of the sum of Rs. for the occupancy right* of has been granted the occupancy for a term of ninety-nine years commencing from the day of 18 of a building-site situated in the of in the Registration Sub-District of and in taluka of the district bounded as follows:—

** Note—The words between these two asterisks should be omitted when the occupancy right is granted free.

(Here describe the plot as required by Section 21 of the Indian Registration Act of 1877.)

1. See *supra*, p. 49 note 2.
2. See *supra*, p. 49.
3. See H. V. Sathe's "Land Revenue Code and the Rules thereunder," 2nd Edition, Bombay, 1894, pp. 344-346.

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and of the following shape and about the following dimensions:—

(Here insert a plan of the plot with dimensions.)

This lease is granted subject to the payment of an annual ground-rent of Rs. being at the rate of Rs. per *and subject to the further condition that the lessee shall within two years from the date hereof (or within such further period, if any, as the Collector shall deem fit to grant) erect on the said site one or more buildings of a permanent description and construction.*

**The words between these two asterisks may, whenever the Collector thinks it expedient, be omitted.

The occupancy of the said building-site is both transferable and heritable and will be continued by the British Government for the aforesaid term of ninety-nine years to whomsoever shall from time to time be the lawful holder thereof, subject only to the payment annually of the above ground-rent according to the provisions of the Land Revenue Code, 1879, or of any other law for the time being in force for regulating the payment of land revenue, *and to the liability to forfeiture of the said occupancy and of all rights and interests connected therewith in case of failure so to pay the said ground-rent or in case of a breach of the condition hereinbefore contained as to the erection of a building or buildings on the said site.*

**The words between two asterisks must be omitted, whenever the preceding condition to which they refer is omitted.

This lease is executed on behalf of the Secretary of State for India in Council by order of the Governor in Council of Bombay by and under the hand and seal of the Collector of this day of 18 .

Seal

(Signed)

Collector.

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Note.*—With the consent of the Collector, a lump payment of Rs. has on this the day of 18 been made by the holder of this lease, into the Government Treasury at in satisfaction of the ground-rent due under this lease up to the date of expiry of the term thereof on the day of 18 .

(Signed)
Treasury Officer.

*This note can be added, under clause 4 of No. 25 of the Land Revenue Code Rules, at any time that lessee with the Collector's consent, makes the lump payment. (Government Resolution No. 9316, dated 18th December 1883.)

Note.—The above form has been sanctioned under Government Resolution No. 7898, dated 25th October 1883.

Section 59 of the Bombay District Municipal Act, 1901.

59. Subject to any general or special orders which the Governor General in Council may make in this behalf, any Municipality

(*a*) after observing the preliminary procedure required by Section 60, and

(*b*) with the sanction of the Governor in Council in the case of City Municipalities, and in other cases of the Commissioner, and subject to such modifications or conditions as under Section 61 the Governor in Council or the Commissioner respectively, in according such sanction, deems fit,

may impose, for the purposes of this Act, any of the following taxes : that is to say,

(i) *a rate on buildings or lands, or both, situate within the municipal district;*

(ii) a tax on all or any vehicles, boats, or animals used for riding, draught or burden, kept for use within the said district;

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(iii) a toll on vehicles, and animals used as aforesaid, entering the said district, but not liable to taxation under the clause last preceding;

(iv) an octroi on animals or goods, or both, brought within the octroi limits for consumption or use therein;

(v) a tax on dogs kept within the said district;

(vi) a special sanitary cess upon private latrines, premises or compounds cleansed by municipal agency, after notice given as hereinafter required;

(vii) a general sanitary cess for the construction or maintenance, or both construction and maintenance, of public latrines, and for the removal and disposal of refuse;

(viii) a water-rate or water-rates, for water supplied by the Municipality, which may be imposed in the form of a rate assessed on buildings and lands, or in any other form, including that of charges for such supply, fixed in such mode or modes as shall be best adapted to the varying circumstances of any class of case or of any individual case;

(ix) a lighting tax;

(x) a tax on pilgrims resorting periodically to a shrine within the limits of the municipal district;

(xi) any other tax to the nature and object of which the approval of the Governor in Council shall have been obtained prior to the selection contemplated in sub-clause (i) of clause (*a*) of Section 60.

Provided that

(*a*) no tax imposed as aforesaid, other than a special sanitary cess or a water-rate, shall, without the express consent of Government, *be leviable in respect of any building or part of any building,* or of any vehicle, animal or other property, *belonging to His Majesty and used solely for public purposes, and not used or intended to be used for purposes of profit,* and no toll shall be leviable for the passage of troops or the conveyance of Government stores or of any other Government property, or for the passage of Military or Police Officers on duty, or the passage or conveyance of any person or property

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in their custody ;

(*b*) no special sanitary cess shall be leviable in respect of any private latrines, premises or compounds unless and until the Municipality have

(i) made provision for the cleansing thereof by manual labour, or for conducting or receiving the sewage thereof into municipal sewers, and

(ii) issued either severally to the persons to be charged, or generally to the inhabitants of the district or part of the district to be charged, with such cess, one month's notice of the intention of the Municipality to perform such cleansing and to levy such cess;

(*c*) the Municipality in lieu of imposing separately any two or more of the taxes described in clauses (i), (vii), (viii), and (ix) of sub-section (1), may impose a consolidated tax assessed as a rate on *buildings or lands*, or both, situate within the municipal district.

Note:—Italics do not appear in the original, but are used here for the purpose of marking the passages to which attention is invited.

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